21

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1915.

No. 532.

IDA MAY INNES, PLAINTIFF IN ERROR,

vs.

JOHN W. TOBIN, SHERIFF OF BEXAR COUNTY, TEXAS.

IN ERROR TO THE COURT OF CRIMINAL APPEALS OF THE STATE OF TEXAS.

FILED JUNE 26, 1915

(24,815)

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INDEX.

	Original.	Print
Caption	1	1
Transcript of record from the district court of the 37th judicial district within and for the county of Bexar, State of Texas	1	1
Caption	1	1
Application for writ of *habeas corpus*	2	1
Exhibit—Warrant by Governor of Texas	4	3
Appointment of John M. Starnes as agent of State of Georgia, etc.	5	3
Writ of *habeas corpus* to Starnes and return thereto	6	4
Writ of *habeas corpus* to Tobin and return thereto	9	6
Order remanding relator, etc.	11	7
Assignments of error	11	7
Statement of facts	15	10
Judge's certificate to statement of facts	22	14
Certificate of district clerk	23	15

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCTOBER 11, 1915.

	Original.	Print
Judgment	24	15
Opinion, Harper, J.	25	16
Opinion, Davidson, J., dissenting	37	23
Relator's motion for rehearing	45	28
Argument on motion for rehearing	46	29
Order overruling rehearing	52	32
Petition for writ of error and order allowing same	52	32
Writ of error bond	56	34
Assignments of error	58	36
Præcipe for transcript of record	60	37
Clerk's certificate	61	38
Writ of error	62	38
Citation and service	63	39

1 Caption.

THE STATE OF TEXAS:

At a term of the honorable Court of Criminal Appeals of the State of Texas, begun and holden within and for the State of Texas, at Austin, and convening on the fifth day of October, A. D. 1914, and which is still in session.

Present: Honorable A. C. Prendergast, Presiding Judge, and Judges W. L. Davidson and A. J. Harper.

The following proceedings on appeal were had in the cause of Ex Parte Ida May Innes, No. 3370, Appeal from Bexar County, to-wit:

Transcript from Lower Court.

Caption.

THE STATE OF TEXAS,
County of Bexar:

At a regular term of the district court of the 37th Judicial District, begun and holden within and for the County of Bexar and State of Texas, before the Hon. W. S. Anderson, Judge thereof presiding, and which opened on the second day of November, A. D. 1914, and which will adjourn on the 2nd day of January, A. D. 1915, the following cause came on for trial, to-wit:

No. 372.

EX PARTE IDA MAY INNES.

2 *Application for Writ of Habeas Corpus.*

STATE OF TEXAS,
County of Bexar:

The Honorable W. S. Anderson, Judge of the 37th Judicial District of the State of Texas, in and for the County of Bexar:

The petition of Ida May Innes would represent unto your Honor that she is illegally restrained of her liberty and confined in the county jail of said county and State by John W. Tobin, sheriff of Bexar County;

That petitioner is so restrained and confined by the said John W. Tobin by virtue of the order of this court and a certain warrant of extradition issued by the Governor of Texas on an requisition made

upon him by the Governor of Georgia upon the grounds that your petitioner had committed a crime in the State of Georgia and that she was a fugitive from Georgia;

That said warrant is in possession of said John W. Tobin but that petitioner is unable to attach a copy of the same to this petition on account thereof;

That J. N. Starnes was appointed the agent of the State of Georgia for the conveyance or transportation of petitioner from Texas to the State of Georgia and that said Starnes is here now demanding that said Tobin surrender your petitioners to him by virtue of said warrant aforesaid.

Your petitioner further avers that said warrant of extradition and said extradition proceedings aforesaid are wholly null and void, among other reasons, your petitioner was never a fugitive from justice from the State of Georgia to the State of Texas within the meaning and intent of the laws of the United States regulating extradition proceedings;

That your petitioner resides in the State of Oregon and while in Oregon, the Governor of Texas made a requisition upon the
3 Governor of Oregon for her extradition to the State of Texas to answer a charge of murder in the State of Texas;

That the Governor of Oregon honored the requisition of the Governor of Texas and issued the extradition warrant for the extradition of petitioner from Oregon to the State of Texas.

That petitioner was brought by virtue of this warrant of extradition from the State of Oregon under arrest and has been continuously kept and restrained of her liberty by the sheriff of Bexar County, by virtue of said extradition proceedings and indictments found against petitioner for the alleged crime for which she was extradited;

That after being extradited your petitioner was indicted by the grand jury of Bexar County, and upon today was regularly acquitted of the crime for which she was extradited;

That immediately upon her acquittal she was remanded to the custody of the sheriff of Bexar County, to be turned over to the said J. N. Starnes, who will deport petitioner to Georgia by virtue of the said warrant of extradition issued by the Governor of Texas as aforesaid;

That petitioner has continuously been restrained of her liberty by virtue of said criminal proceedings and is so now restrained of her liberty;

That in consequence she is not now and never has been a fugitive from the State of Georgia to the State of Texas and the extradition proceedings above referred to an account thereof are wholly null and void.

Wherefore your petitioner prays, your Honor, to grant and issue a writ of habeas corpus commanding the said John W. Tobin, sheriff aforesaid and the said J. N. Starnes, agent of the State of Georgia aforesaid, to bring your petitioner, Ida May Innes, before your Honor at such time and place as you may designate, in order that the cause of her restraint and confinement may be inquired

into and upon the hearing of the same, your Honor, he prays
4 that she may be discharged from such illegal restraint and confinement and that said extradition warrant aforesaid be decreed to be null and void, as well as said extradition proceedings.

IDA MAY INNES.

I, Ida May Innes, being duly sworn upon my oath say that the allegations of the above petition are true according to my belief.

IDA MAY INNES.

Sworn to and subscribed by Ida May Innes before me this the 16th day of November, A. D. 1914.

[SEAL.]

O. M. FITZHUGH,
Notary Public, Bexar Co., Texas.

STATE OF TEXAS,
County of Bexar:

The Clerk of the District Court will issue a writ of habeas corpus as hereinabove prayed for returnable before me at the Court House of said County and State at 3:- o'clock P. M. of this the 17th day of November, A. D. 1914.

W. S. ANDERSON,
Judge of the 37th Judicial District,
Bexar County, Texas.

Filed Nov. 16 1914. Andres Coy, Jr., Clerk of the District Courts, Bexar County, Texas. By Garvin C. Legan.

EXHIBIT.

In the Name and by the Authority of the State of Texas.

Executive Department.

To All and Singular the Sheriffs, Constables, and Other Civil Officers of said State:

5 Whereas, it has been made known to me by the Governor of the State of Georgia Ida May Innes stands charged by indictment before the proper authorities, with the crime of Larceny after Trust committed in said State, and that the said defendant has taken refuge in the State of Texas, and whereas, the said Governor, in pursuance of the Constitution and Laws of the United States, has demanded of me that I cause the said fugitive to be arrested and delivered to Jno. M. Starnes who is, as is satisfactorily shown, duly authorized to receive *him* into custody and convey *him* back to said State and whereas, said demand is accompanied by copy of said indictment duly certified as authentic by the Governor of said State.

Now, therefore, I, O. B. Colquitt, Governor of Texas, by virtue of

the authority vested in me by the Constitution and Laws of this State, and the United States, do issue this my warrant, commanding all Sheriffs, Constables, and other Civil officers of this State to arrest and aid and assist in arresting said fugitive and to deliver her when arrested to the said agent in order that she may be taken back to said State to be dealt with for said crime.

In testimony whereof, I have hereunto signed my name and have caused the seal of the State to be impressed hereon, at Austin, Texas, this 4th day of November, A. D. 1914.

[SEAL.] O. B. COLQUITT, *Governor.*

By the Governor:

D. A. GREGG,
Acting Secretary of State.

Executive Department.

The State of Georgia.

The Governor of the State of Georgia to all whom these presents shall come, Greeting:

Whereas, it has been officially represented to me that Ida May Innes stands charged by indictment in Fulton County, State of Georgia, with the offense of Larceny after Trust.

And whereas, I have made application to His Excellency the Governor of the State of Texas for the delivery of the said Ida May Innes as fugitive from justice and have appointed, and by these presents, I do appoint and commission John M. Starnes agent, on the part of this State for the purpose of bringing the said Ida May Innes to this State, having jurisdiction of the crime aforesaid, whenever the Governor of the State of Texas shall cause her to be delivered up agreeably to the requisition aforesaid.

These are, therefore, to request and require all persons to permit the said John M. Starnes to receive and secure the said Ida May Innes and bring her unmolested into this State, having jurisdiction of the crime.

Given under my hand and the seal of the Executive Department, at the Capitol, in the City of Atlanta, the 31st day of October in the year of our Lord, One Thousand Nine Hundred and Fourteen, and of the Independence of the United States of America, the One hundred and Thirty-ninth.

[SEAL.] JOHN M. SLATOR, *Governor.*

By the Governor:

T. B. CONNER,
Secretary Executive Department.

N. B.—When this commission is executed the agent for the State of Georgia will enter his endorsement hereon and return to the Ex. Dep. Georgia.

Writ of Habeas Corpus.

No. 372.

Ex Parte Ida May Innes.

7 To J. N. Starnes, Agent of the State of Georgia, Greeting:

Whereas on this the 16th day of Nov. A. D. 1914, an application for a writ of habeas corpus and release from improper custody having been filed by Ida May Innes who alleges substantially the following, to-wit:

Petitioner is restrained and confined by John W. Tobin, by virtue of the order of this court and a certain warrant of extradition issued by the Governor of Texas on a requisition made upon him by the Governor of Georgia upon the grounds that petitioner had committed a crime in the State of Georgia and that she was a fugitive from Georgia, that said extradition proceedings aforesaid are wholly null and void, among other reasons, that petitioner was never a fugitive from justice from the State of Georgia to the State of Texas within the meaning and intent of the Laws of the United States regulating extradition proceedings. Wherefore, petitioner prays that she be discharged from such illegal restraint and confinement and that said extradition warrant aforesaid be decreed to be null and void, as well as said extradition proceedings.

And whereas, said application for a writ of habeas corpus has been granted by the Honorable W. S. Anderson, Judge presiding of the 37th Judicial District Court in and for Bexar County, Texas, made returnable to said court, on the 17th day of November 1914, at 3 o'clock P. M.

Therefore you are hereby commanded to be and appear before said District Court, at the Court House thereof in the City of San Antonio, Texas, on the 17th day of November 1914, at 3 o'clock P. M., and to then and there produce the body of said Ida May Innes and show cause, if any you have, why she should not be released from custody.

To the Sheriff or any Constable of Bexar County, Greeting:

You are hereby commanded that you execute and make due
8 return of this writ, as is required by law.

Witness, Andres Coy, Clerk of the District Courts in and for Bexar County, Texas, at my office at the Court House, in the City of San Antonio, this the 16th day of Nov. A. D. 1914.

[SEAL.] ANDRES COY,
Clerk District Courts of Bexar County, Texas,
By GARVIN C. LEGAN, *Deputy.*

Issued same day.

I, J. N. Starnes special agent of the State of Georgia, return this copy of the original writ of habeas corpus served on me and for such return say that I hold said Ida May Innes by virtue of an extradition warrant hereto attached and further by an order of this court de-

livered verbally in open court and of which I have no copy and I here now in open court produce said Ida May Innes.

J. N. STARNES.

Subscribed and sworn to before me the undersigned authority this the 17th day of Nov. 1914.

[SEAL.]

ANDRES COY,
Cl'k Dist. Courts Bexar County, Texas,
By M. J. STUART, *Deputy.*

Endorsements: No. 372. 37th Jud. Dist. Court, Bexar County, Texas. Ex Parte Ida May Innes. Writ of Habeas Corpus. Filed Nov. 17 1914. Andres Coy, Clerk of the District Courts, Bexar County, Texas. By M. J. Stuart, Deputy.

9 *Writ of Habeas Corpus.*

No. 372.

Ex Parte IDA MAY INNES.

To John W. Tobin, Sheriff of Bexar County, Texas, Greeting:

Whereas on this the 16th day of Nov. A. D. 1914, an application for a writ of habeas corpus and release from improper custody having been filed by Ida May Innes who alleges substantially the following, to-wit:

Petitioner is restrained and confined by John W. Tobin, by virtue of the order of this court and a certain warrant of extradition issued by the Governor of Texas on a requisition made upon him by the Governor of Georgia upon the grounds that petitioner had committed a crime in the State of Georgia and that she was a fugitive from Georgia. That said extradition proceedings aforesaid are wholly null and void, among other reasons, that petitioner was never a fugitive from justice from the State of Georgia to the State of Texas within the meaning and intent of the Laws of the United States regulating extradition proceedings. Wherefore, petitioner prays that she be discharged from such illegal restraint and confinement and that said extradition warrant aforesaid be decreed to be null and void, as well as said extradition proceedings.

And, whereas, said application for a writ of habeas corpus has been granted the Honorable W. S. Anderson, Judge presiding of the 37th Judicial District Court in and for Bexar County, Texas, made returnable to said court on the 17th day of November 1914, at 3 O'clock P. M.

Therefore you are commanded to be and appear before said District Court, at the Court House thereof in the City of San Antonio, Texas, on the 17th day of November 1914, at 3 o'clock P. M., and to then and there produce the body of said Ida May Innes and show cause, if any you have, why she should not be released from
10 custody.

To the Sheriff or any Constable of Bexar County, Greeting:

You are hereby commanded that you execute and make due return of this writ as is required by law.

Witness, Andres Coy, Clerk of the District Courts in and for Bexar County, Texas, at my office at the court house, in the City of San Antonio, this the 16th day of Nov. A. D. 1914.

[SEAL.] ANDRES COY,
Clerk District Courts of Bexar County, Texas,
By GARVIN C. LEGAN, *Deputy.*

Issued same day.

I, John W. Tobin, Sheriff of Bexar County, Texas, return this copy of the original writ of habeas corpus served on me and for such return say, that I hold the within named Ida May Innes by virtue of an extradition warrant of the Governor of this State issued on the application of the Governor of the State of Georgia and which said warrant is now in the hands of J. N. Starnes, special agent for the State of Georgia and can not therefore be attached hereto. And I further hold said Ida May Innes by virtue of an order of this court given in open court verbally to me and of which I have no copy. I here and now produce said Ida May Innes in open court.

JOHN W. TOBIN,
Sheriff Bexar Co., Tex.,
By J. W. GALBRATH, *Deputy.*

Sworn to and subscribed before me the undersigned authority on this the 17th day of Nov. A. D. 1914.

[SEAL.] ANDRES COY,
Dist. Clk Bexar County, Texas,
By M. J. STUART, *Deputy.*

11 Endorsements: No. 372. 37th Jud. Dist. Court, Bexar County, Texas. Ex Parte Ida May Innes. Writ of Habeas corpus. Filed Nov. 17, 1914, Andres Coy, Clerk of the District Courts, Bexar County, Texas. By M. J. Stuart, Deputy.

Order Remanding.

In the 37th District Court, Bexar County, Texas, November Term, A. D. 1914.

No. 371.

Ex Parte IDA MAY INNES.

On this the 18th day of November, A. D. 1914, came on to be heard the application of petitioner to be discharged on writs of habeas corpus, and the same having been heard and considered by the court, the court is of the opinion that the application should be refused and applicants be remanded to the Georgia Agent.

To all of which action of the court the defendant in person and by attorney excepted and in open court gave notice of appeal to the Court of Criminal Appeals sitting at Austin, Texas.

Ent. Vol. "T" p. 508.

Assignments of Errors.

In the District Court, Bexar County, Texas, 37th Judicial District.

No. 372.

Ex Parte Ida May Innes.

Now comes Ida May Innes, relator, herein and assigns the following errors committed by the court on the trial of the above
12 entitled cause, to-wit:

I.

The court erred in rendering judgment remanding relator to the custody of John W. Tobin, Sheriff of Bexar County and to John M. Starnes, agent of the State of Georgia appointed for the extradition of relator to the State of Georgia.

II.

Upon the law and the undisputed evidence, the court erred in not releasing and discharging relator from the custody of the above named parties and restoring her to her liberty.

III.

The court erred in not releasing and discharging relator from custody, because, under the law and the evidence she was not a fugitive from justice, and therefore not subject to extradition within the meaning of the Act of Congress of the United States regulating the extradition of fugitives from justice.

IV.

The judgment of the court was contrary to the law and evidence and the court shall have discharged relator from all custody because, it is shown by the uncontradicted evidence that relator, Ida May Innes, and her husband, Victor E. Innes, at and long prior to the 18th day of August, A. D. 1914, were resident citizens of the State of Oregon; that prior to the 18th day of August, A. D. 1914, Governor O. B. Colquitt of Texas made his requisition upon the Governor of Oregon for the extradition of relator, Ida May Innes, to the State of Texas; that thereupon the Governor of Oregon granted said requisition and issued his warrant for the arrest and the extradition of relator to Texas and *the extradition of relator to Texas and* appointed a deputy sheriff of Bexar County, as the agent of the

State of Texas for the extradition of relator; that said extradition was granted by virtue of certain complaints which were filed
13 before a justice of the peace in and for Bexar County, Texas, charging relator with the crime of the murder of one Aloise Nelms Dennis and one Beatrice Nelms; that in pursuance of said extradition proceedings relator was arrested together with her said husband, in the State of Oregon on the 18th day of August, A. D. 1914, and by virtue thereof brought and conveyed by said deputy sheriff to Bexar County, Texas, and then and there committed to the jail of said county, where she has continuously been from that date to the present time; that subsequent to her being committed to the custody of the sheriff of Bexar County, as above stated, the grand jury of Bexar County, Texas, on the 10th day of October, A. D. 1914, returned into the district court of Bexar County, Texas, indictments against your relator charging her with the crime of the murder of the said Aloise Nelms Dennis and Beatrice Nelms, and furthermore preferred indictments against her charging her with entering into a conspiracy to murder said parties; that as soon as said indictments were returned, capiases were issued upon the same and the same were read to relator in the jail of said county; that in each of said cases said court allowed her bail and fixed the amount of her bail but she was unable to give the same and consequently remained in jail, she still being in jail, as above stated; that on Monday the 16th day of November, A. D. 1914, relator was duly tried in the District Court of Bexar County, Texas, 37th Judicial District, upon all of the indictments preferred against her for murder as above stated, before juries, and was duly acquitted of said offenses and judgments of acquittal duly and properly entered; that thereupon, on said day, the District Attorney, duly, with the consent of the court, dismissed all of the indictments against relator for the crime of conspiracy to murder as aforesaid, and judgments were entered by said court accordingly; that relator and her said husband, Victor E. Innes, were extradited and brought into Texas, as aforesaid, by virtue of these extradition proceedings, as aforesaid, and were
14 confined in the jail of Bexar County by virtue thereof; that relator has been acquitted of all the charges preferred against her for a violation in any manner of the laws of the State of Texas, as above stated, all of the criminal proceedings against her, so far as the State of Texas is concerned, have been fully concluded and determined, as hereinabove stated; that immediately upon the disposition of the criminal cases against her, as above stated, she was immediately arrested by virtue of the Georgia extradition proceedings, hereinabove set out and incarcerated in the jail of Bexar County, as hereinabove stated, where she still remains; that upon the determination of the criminal cases and charges against her, she was not afforded an opportunity to return to the State of Oregon, her home, but is restrained of her liberty in said jail, as herein detailed and set forth; that there are no other charges pending against her for the violation of the laws of the State of Texas; that by reason thereof *he* was not a fugitive from justice under the Act of Congress of the

United States regulating the extradition of fugitives from justice, and was therefore not subject to be extradited.

V.

The court erred in remanding relator to the custody of respondents and in not discharging and releasing her from their custody, because having been brought into Texas by virtue of a requisition made by the Governor of Texas upon the Governor of Oregon, which was granted by the Governor of Oregon, in order that relator might answer the crime of murder charged to have been committed by her in the county of Bexar and State of Texas, and having been so brought into Bexar County, Texas, forcibly and against her will, and having answered to these offenses for which she was extradited, and having been acquitted of all charges against her for the violation of the laws of Texas, for which she was extradited from the State of Oregon, relator was entitled to be given reasonable and proper time in which to return to the State of Oregon, her home, and from which she had been extradited.

VI.

For the reasons set forth in the above assignments of error the warrant of arrest issued by the Governor of Texas for the extradition of relator to the State of Georgia, was null and void, and the court erred in not discharging relator.

VII.

The warrant of extradition by virtue of which relator is restrained of her liberty, is null and void for the following reasons; that as the Governor of Oregon had honored the requisition of the Governor of Texas for the extradition of relator to Bexar County, Texas, and as relator had fully answered to the crimes for which — had been so extradited, it was a breach of comity for the Governor of Texas to have issued the warrant of arrest for her extradition to the State of Georgia.

SWEARINGEN & WARD,
Attorneys for Relator, Ida May Innes.

Filed Nov. 23, 1914. Andres Coy, Clerk of the District Courts, Bexar County, Texas. By Garvin C. Legan, Deputy.

Statement of Facts.

In the District Court, Bexar County, Texas, 37 Judicial District.

No. 372.

Ex Parte Ida May Innes.

Be it remembered on the trial of the above entitled and numbered cause the following evidence was introduced and the following facts

proven, being all of the evidence introduced on the trial of
16 this cause.

I.

The application for the writ of habeas corpus was read in evidence and reference is hereby made to the same.

II.

The return to said writ of John W. Tobin, sheriff of Bexar County, Texas, was read in evidence and reference is hereby made to the same.

III.

The return of John M. Starnes, the agent of Georgia, was next read in evidence and reference is hereby made to the same.

IV.

There was then offered in evidence the appointment of John M. Starnes by the Governor of Georgia as the agent of said State for the extradition of relator, Ida May Innes, to Georgia and which is as follows:

Executive Department,

The State of Georgia.

The Governor of the State of Georgia to all to whom these presents shall come, Greeting:

Whereas, it has been officially represented to me that Ida May Innes stands charged by Indictment in Fulton County, State of Georgia, with the offense of Larceny after Trust;

And whereas, I have made application to His Excellency, the Governor of the State of Texas for the delivery of the said Ida May Innes as a fugitive from justice and have appointed, and by these presents, I do appoint and commission John M. Starnes agent, on the part of this State for the purpose of bringing the said Ida May Innes to this State, having jurisdiction of the crime aforesaid, when-
17 ever the Governor of the State of Texas shall cause her to be delivered up agreeably to the requisition aforesaid.

These are, therefore, to request and require all persons to permit the said John M. Starnes, to receive and secure the said Ida May Innes and bring her unmolested into this State, having jurisdiction of the crime.

Given under my hand and the seal of the Executive Department, at the capitol, in the City of Atlanta, the 31st day of October in the year of our Lord, One Thousand Nine Hundred and Fourteen, and of the Independence of the United States of America, the One Hundred and Thirty-ninth.

[SEAL.] JOHN M. SLATOR, *Governor.*

By the Governor:
T. B. CONNER,

Secretary Executive Department.

N. B.—When this commission is executed the agent for the State of Georgia will enter his endorsement hereon and return to the Ex. Dep. Georgia.

Endorsed on back.

GEORGIA, —— *County:*

By authority of the within commission, I have received the said —— —— from —— —— in the State of ——, brought and delivered her to —— —— sheriff of —— County, Georgia.
This — day of ——, 1914.

——— ———, *Agent.*

18 V.

There was next read in evidence the warrant of the Governor of Texas for the extradition of the said Ida May Innes to Georgia upon the requisition of the Governor of Georgia and which is as follows:

In the Name and by the Authority of the State of Texas.

Executive Department.

To All and Singular the Sheriffs, Constables, and other Civil Officers of said State:

Whereas, it has been made known to me by the Governor of the State of Georgia Ida May Innes stands charged by indictment before the proper authorities, with the crime of Larceny after Trust, committed in said State, and that the said defendant has taken refuge in the State of Texas, and whereas, the said Governor, in pursuance of the Constitution and Laws of the United States, has demanded of me that I cause the said fugitive to be arrested and delivered to Jno. M. Starnes who is, as is satisfactorily shown, duly authorized to receive *him* into custody and convey *him* back to said State, and whereas, said demand is accompanied by copy of said indictment duly certified as authentic by the Governor of said State.

Now, therefore, I, O. B. Colquitt, Governor of Texas, by virtue of the authority vested in me by the Constitution and Laws of this State, and the United States, do issue this my warrant, commanding all sheriffs, constables, and other civil officers of this State to arrest and aid and assist in arresting said fugitive and to deliver her when arrested to the said agent in order that she may be taken back to said State to be dealt with for said crime.

In testimony whereof, I have hereunto signed my name and

have caused the seal of State to be hereon impressed, at
19 Austin, Texas, this 4th day of November, A. D. 1914.
[SEAL.] O. B. COLQUITT, *Governor.*

By the Governor:
D. A. GREGG,
Acting Secretary of State.

Endorsed on back: No. —. Executive Warrant. State of —— vs. —— ——. Charged with —. Issued —— —, A. D. 1914. Received the warrant —— —, 1914, and executed the same —— —, 1914, by arresting the within named fugitive and delivering her to —— ——, agent named in said warrant. —— ——.

VI.

It was then proven that relator was restrained of her liberty and was in custody by virtue of said above set out documents and which were attached to and made a part of the returns of respondents, John W. Tobin, sheriff of Bexar County, Texas, and John M. Starnes, agent of the State of Georgia, for the extradition of the said Ida May Innes.

VII.

It was further proven that the verbal order referred to in the returns of respondents was an order made in open court by Judge W. S. Anderson directing the respondent, Sheriff, to hold in custody, relator, until the above set out warrant of extradition could be served upon her, and that, subsequently, said warrant was served upon her, which vacated the verbal order.

VIII.

It was further proven that relator, Ida May Innes and her husband, Victor E. Innes at and long prior to the 18th day of August, A. D. 1914, were resident citizens of the State of Oregon; that prior to the 18th day of August, A. D. 1914, Governor O. B.
20 Colquitt of Texas, made his requisition upon the Governor of Oregon for the extradition of the relator, Ida May Innes, to the State of Texas; that thereupon the Governor of Oregon granted said requisition and issued his warrant for the arrest, and the extradition, of relator to Texas, and appointed a deputy sheriff of Bexar County, as the agent of the State of Texas for the extradition of relator; that said extradition was granted by virtue of certain complaints which were filed before a justice of the peace in and for Bexar County, Texas, charging relator with the crime of murder of one Aloise Nelms Dennie and one Beatrice Nelms; that in pursuance of said extradition proceedings relator was arrested together with her said husband in the State of Oregon on the 18th day of August, A. D. 1914, and by virtue thereof brought and conveyed by said deputy sheriff to Bexar County, Texas, and then and there committed to the jail of said county, where she has continuously been from that date to the present time; that subsequent to her

being committed to the custody of the sheriff of Bexar County, as above stated, the grand jury of Bexar County, Texas, on the 10th day of October, A. D. 1914, returned into the district court of Bexar County, Texas, indictments against your relator charging her with the crime of the murder of the said Aloise Nelms Dennis and Beatrice Nelms, and furthermore preferred indictments against her with entering into a conspiracy to murder said parties; that as soon as said indictments were returned, capiases were issued upon the same and the same were read to relator in the jail of said county; that in each of said cases said court allowed her bail and fixed the amount of her bail but she was unable to give the same, and consequently, remained in jail, as above stated; that on Monday, the 16th day of November, A. D. 1914, relator was duly tried in the district court of Bexar County, Texas, 37th Judicial District, upon all of the indictments preferred against her for the murder as above
21 stated before juries, and was duly acquitted of said offenses, and judgments of acquittal duly and properly entered; that thereupon on said day, the District Attorney, duly, with the consent of the court, dismissed all of the indictments against relator for the crime of conspiracy to murder, as aforesaid, and judgments were entered by this court, accordingly; that relator and her said husband, Victor E. Innes, were extradited and brought into Texas, as aforesaid, by virtue of these extradition proceedings, as aforesaid, and were confined in the jail of Bexar County, by virtue thereof; that relator has been acquitted of all the charges preferred against her for a violation in any manner of the laws of the State of Texas, as above stated, all of the criminal proceedings against her, so far as the State of Texas is concerned, have been fully concluded and determined as hereinabove stated; that immediately upon the disposition of the criminal cases against her, as above stated, *he* was immediately arrested by virtue of the Georgia extradition proceedings hereinabove set out and incarcerated in the jail of Bexar County, as hereinabove stated, where she still remains; that upon the determination of the criminal cases and charges against her, she was not afforded an opportunity to return to the State of Oregon, her home, but is restrained of her liberty in said jail, as herein detailed and set forth; that there are no other charges pending against her for the violation of the laws of the State of Texas.

We, the undersigned, W. C. Linden, District Attorney, representing the respondents in the above cause, and Swearingen & Ward, attorneys for the relator, do hereby agree that the above and foregoing is a true and correct statement of all the evidence offered on the trial of this cause.

W. C. LINDEN,
District Attorney.
SWEARINGEN & WARD,
Attorneys for Relator.

22 I, W. S. Anderson, Judge of the District Court of Bexar County, 37th Judicial District, do hereby certify that the

above and foregoing statement of facts duly signed and agreed to by the attorneys for relator and respondents, was duly presented to me; that I have duly examined and considered the same and I hereby certify that I find the same correct and I hereby approve the same, and I hereby order that the same be filed among the records of this cause as a statement of facts in this cause, this the 23rd day of November, A. D. 1914.

W. S. ANDERSON,
Judge District Court, Bexar County, Texas,
37th Judicial District.

Endorsed: No. 372. Ex Parte Ida May Innes. Statement of facts. Filed Nov. 23, 1914, Andres Coy, Clerk of the District Courts, Bexar County, Tevas, by Garvin C. Legan, Deputy. Filed in Court of Criminal Appeals at Austin, Texas, Dec. 14, 1914. E. P. Smith, Clerk.

23 *Certificate.*

THE STATE OF TEXAS,
County of Bexar:

I, Andres Coy, Clerk of the District Courts of Bexar County, Texas, do hereby certify that the foregoing 15 pages contain a true and correct transcript of all the orders and proceedings had in a cause on the criminal docket of the District Court of the 37th Judicial District of Bexar County, Texas, numbered No. 372 Ex Parte Ida May Innes.

Witness my hand and seal of said court, at office in the City of San Antonio, this the 11th day of December, A. D. 1914.

[SEAL.] ANDRES COY,
District Clerk, Bexar County, Texas,
By A. B. KLIEFOTH, *Deputy.*

24 January 13th, A. D. 1915.

No. 3370.

Ex Parte IDA MAY INNES.

Appeal from Bexar County.

Affirmed. Opinion by Harper, J.
Davidson, Judge, dissents.

This cause came on to be heard on the transcript of the record of the court below, and the same being inspected, because it is the opinion of this court that there was no error in the judgment, it is ordered, adjudged and decreed by the court that the judgment be in all things affirmed, and that the appellant pay all costs in this behalf expended, and that this decision be certified below for observance.

25 3370.

Ex Parte IDA MAY INNES.

From Bexar County.

Opinion.

This is a companion case to that of Victor E. Innes this day decided, and the facts are identical. There can be no question that relator is a fugitive from justice. She is charged with crime alleged to have been committed in the State of Georgia, and she fled from that State, but it is insisted that she fled to the State of Oregon and had her residence in that State, and the Governor of that State might honor a requisition, yet the Governor of Texas could not do so because her presence in this State is not voluntary—that she had not fled to this State for an asylum. The only question we think it necessary to discuss is, did the Governor of Texas have the authority in law to grant the requisition and order her to be delivered to the Georgia authorities? The record discloses that she did not come into this State voluntarily, but that being charged with crime, alleged to have been committed in Bexar County, the Governor of Texas issued a requisition on the Governor of Oregon, who honored same, and she was in Texas by reason of being brought here on that requisition. When tried for the offense with which she was charged in Bexar County, she was acquitted. It then developed that while she was jailed in Bexar county, the Governor of Texas had granted a requisition from the Governor of Georgia, and instead of being discharged from custody she was immediately arrested on the requisition. A writ of habeas corpus was sued out before Judge Anderson, who refused to release her, and ordered her turned over to the Georgia authorities to be conveyed to that State to be tried for the offense with which she is charged in that State. From that order relator has appealed to this court, and makes the contention that she was brought here from Oregon by the officers, the Governor of this State has no authority to grant a requisition.

26 This is a question that has been before the courts of this country but a few times, and the decisions are not entirely in *in* harmony. Mr. Spear in his work on Extradition, sustains the contention of relator, and bases his reasoning mainly on the wording of the United States statute, which reads as follows: Sec. 5278, U. S. Rev. Stat. "Whenever the executive authority of any state or territory demands any person as a fugitive from justice, of the executive authority of any state or territory to which such person has fled, and produces a copy of an indictment found, or an affidavit made before a magistrate of any state or territory, charging the person demanded with having committed treason, felony or other crime, certified as authentic by the Governor or chief magistrate of the State or territory from whence the person so charged has fled, it shall be the duty of the executive authority of the state or territory to which such person has fled to cause him to be arrested and secured," etc.

It will be noticed that this statute requires the requisition to be issued by the Governor of the State from which the person has fled, and it has been held, as contended by Mr. Spear, in almost an unbroken line of decisions, that unless the person was in the state at the time of the commission of the offense and subsequently left that state, such person cannot be extradited under the above statute and the provisions of the Federal Constitution. However, this rule of law need not be herein discussed, for it is unquestioned that relator was in the State of Georgia at the date of the alleged offense, and subsequently left that State and went to Oregon, from which state she was brought to Texas by extradition process.

It is contended that as this construction has been given to these words in the statute and the Constitution, that the same construction ought to be given to the words "to the state to which she has fled," and unless one has voluntarily gone into a state, the Governor
27 has no authority to grant a requisition. The Federal Constitution contains no such qualification, and provides instead: "A person charged in any state with treason, felony or other crime, who shall flee from justice and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up to be removed to the state having jurisdiction of the cause."

Relator admits that the constitutional provision has no clause which limits the right to honor the requisition to the chief executive of the State to which the prisoner has fled, but instead uses the words, in which he may be found, yet the insistence is made that this clause of the constitution is not self-executing, and, therefore, we must look alone to the statute enacted thereunder and, as this statute contains the qualifying words "to which he has fled," the power to honor a requisition is limited to the chief executive of a state to which such person may voluntarily go.

In support of his text Mr. Spear cites but one authority, that of Daniel's case, which came before Judge Parsons, of the Quarter Sessions Court in Philadelphia, in 1848, the court holding, Judge Bun rendering the decision: "Where a defendant is brought into a state as a fugitive from justice, he cannot be surrendered to the authorities of another state as a fugitive, but must be allowed an opportunity to return to the State in which he is domiciled." While this is the only authority cited by Mr. Spear, yet it may be said in support of that doctrine, the Governor of New York in 1889, refused to grant a requisition under such circumstances. James Hope was charged with crime in New York, and the Governor of California honored the requisition of the Governor of New York. Hope was tried and convicted. After having served the term of punishment assessed, the Governor of Delaware issued a requisition and asked the Gov-
28 ernor of New York to surrender Hope to that state to be tried for a crime for which he stood charged in that state. The Governor of New York refused to grant the requisition, basing his ruling on that line of cases in which it was held that where a person has been extradited from one state to another on a particular charge, that he could only be tried for that offense and no other offense.

This rule has never been adhered to in this state, but on the other hand the reverse has been specifically held in this State. In the case of Ham v. The State, 4 Texas Crim. App. 666, this court held:

"Suppose, then, as in the case at bar, he is surrendered and extradited, can he be tried for any other offense than the one for which he was extradited? Where is the prohibition? Good faith and comity leave that entirely to the discretion of the state which had the right to demand him for any crime which he committed, and which having once rightfully obtained jurisdiction of his person, is only limited in her treatment of him to the responsibility of seeing that the same privileges and immunities which her laws would afford to one of her own citizens are extended and guaranteed to him.

"Since the able briefs, both of the learned counsel for the appellant and Attorney General Boone, for the state, were prepared in this case, this identical question here discussed was submitted 'in the matter of Noyes,' upon habeas corpus, before the United States District Court for the District of New Jersey, May 27, 1878, and it was held that 'a fugitive from justice, extradited, under the Act of Congress, from one state in the Union, on the charge of the commission of a specific crime, can be held by the courts of the state to which he is surrendered for trial for another and different crime.' Nixon, J., delivering the opinion in that case, most pertinently and pointedly remarks: 'But here a court of competent jurisdiction has the custody of a person who is charged with the commission of certain offenses against the laws of the State. The answer to the charge is,

29 that some other person has done a wrong to the prisoner by violating the laws of another state in arresting him without proper authority. In a criminal case this can hardly be reckoned a pertinent response. It is a claim on the part of the accused that his criminal violations of the law are to be condoned by his personal injuries. It is asking the court to suspend its responsible duties, to-wit, the trial of offenders against the Penal Code of the State, while the persons charged with the crime are instituting preliminary investigations into the methods adopted to bring them within its jurisdiction. Such a course, for obvious reasons, is allowable in a civil suit between private litigants; but, for like obvious reasons, cannot be, and never has been, allowed in criminal proceedings, where the object of the prosecution is to punish the offender against the public."

This rule has been adhered to in Baker v. State, 43 Texas Crim. Rep. 282; Brookin v. State, 26 Texas Crim. App. 124, and has the sanction of the Supreme Court of the United States, Lascelles v. Georgia, 148 U. S. 537.

In Cyc. 97 it is said: "Although there has long been a conflict in the decisions of courts of the several states, it is now generally accepted that a fugitive from justice, surrendered by one state upon the demand of another, is not protected from prosecution for offenses other than that for which he was surrendered, but may be tried for any crime committed in the demanding state either before or after extradition," citing Carr v. State, 104 Ala. 4; Lascelles v. State 90 Ga. 347; State v. Healy, 89 Iowa 94; Commonwealth v. Wright, 158

Mass. 149; State v. Walker, 110 Mo. 467; Petry v. Leichger, 47 Neb. 126; People v. Cross, 135 N. Y. 536; State v. Stewart, 60 Wis. 587; State v. Glover, 112 N. C. 896.

So it is seen that the rule relied on by the Governor of New York in the Hope case is not only contrary to the rule in Texas,
30 but is opposed to the great weight of authority, and is even no longer the rule in New York. People v. Cross, supra, and is entitled to but little, if any, weight, in passing on the question involved in this case.

The Daniel's case relied on by Mr. Spear to sustain his text, was not rendered by a court of final resort, but only a court of Quarter Sessions, and is entitled to only such weight as its reasoning may justify. In opposition to the doctrine therein announced, we find the question of surrender to a third state was before the courts in Illinois in 1879, in the case of the People ex rel. Suydam v. Sennott.

"The facts in the case of Sennott are that, having committed a crime in Pennsylvania, he went first to West Virginia, where he remained a while, and then to Chicago, in the State of Illinois, where he resided for about two years. He then left Chicago and went to New York, from which state he was brought back to Illinois on a charge of crime there committed. After his return he was discharged on habeas corpus; but he was immediately rearrested on a warrant issued upon a requisition of the Governor of Pennsylvania demanding his rendition for the crime committed in that state. An application was at once made to Judge McAllister, of the circuit court of Cook County, Illinois, for the discharge of the prisoner on habeas corpus. The ground chiefly relied upon was that he had not fled to Illinois but was brought there against his will. It was contended that under the Act of 1793 he must have fled to Illinois. The court said that the Constitution of the United States provided for the surrender of persons 'who shall flee from justice and be found in another state.' The Act of Congress says: 'Whenever the executive authority of any state or territory demands any person as a fugitive from justice of the executive authority of any state or territory to which such person has fled.' The court said a point
31 was made of the difference in language, but if the constitution and the Act differed the former must prevail.

" 'It seems to me,' said Judge McAllister, 'to be a fair interpretation of the constitutional provisions, that the other requisites being supplied, it is only necessary, to justify the arrest under the executive warrant, that the person should be a fugitive from the justice of the demanding state, and be found in the State where the warrant issued. I, therefore, do not concur in the position that the relator cannot be amenable to such warrant, unless he had fled to this State, and remained here as such fugitive at the time of his arrest. Having committed the crime in Pennsylvania, and then departed the state, he is to be regarded as a 'fugitive from justice,' so long as he keeps out of the State, and subject to the extradition laws, unless that state has lost its right to demand him by her own laches. The executive warrant in these cases is a criminal process, and when he was discharged from imprisonment under the proceedings by which he

was brought here, by what rule of law, if he was here as a fugitive from justice, he could be exempt from such process, I confess myself unable to understand. The Governor was under no duty to return him to New York, or guarantee a safe return. He might be privileged from arrest on civil process by a well settled rule of law, but not for a criminal one. No such privilege is known to the law. The only requisites of a case, under the Constitution and laws, are: 1. The person demanded must be charged in some state with treason, felony, or other crime. 2. He must be a fugitive from justice, because he is expressly described as one who shall flee from justice, and who is to be delivered upon demand of the executive authority of the state from which he fled. 3. He must be found in another state than the one in which the crime is charged to have been committed.'

"The court accordingly dismissed the writ, and remanded the prisoner into custody. He then obtained another writ of
32 habeas corpus from Judge Drummond, of the United States circuit court for the Northern District of Illinois. Judge Drummond took the same view of the matter as Judge McAllister, and Sennott was taken back to Pennsylvania.

"The same question was considered by the Supreme Court of Indiana in 1886, in the following case: A person committed a crime in Michigan and fled to Indiana, where he was arrested and held in custody from December 12, 1884, till September 12, 1885, on an indictment for a crime committed in the latter state. On December 29, 1884, the Governor of Indiana, upon the requisition of the Governor of Michigan, issued a warrant for the prisoner's arrest and rendition. This warrant was not then executed owing to the fugitive's being held for trial in Indiana for a crime there committed. On September 12, 1885, he escaped from jail and fled to Ohio, from which state he was brought back to Indiana by regular rendition proceedings. He was then held in custody until April 1886, when a nolle prosequi was entered. He was then arrested on the warrant of rendition, and claimed that, having been brought into Indiana from Ohio by 'extradition' proceedings, he could not be delivered up to the State of Michigan without an opportunity to return to Ohio. The court held otherwise." In commenting on this case Mr. Moore, in his work on Extradition, says: "In so doing it laid much stress on the fact that the fugitive originally came voluntarily into Indiana, and should not by reason of his flight from the state be placed in a better position than if he had not fled. This, the court said, distinguished it from most of the other cases. The force of this reasoning may be doubted. If it be held that a fugitive cannot be permitted to derive any advantage from his flight the rule that he cannot be tried for an offense other than that for which he was surrendered must be rejected. This rule applies only to offenses committed previously to extradition, and, practically, previously to flight.
33 It is not doubted that a fugitive may be tried for an offense committed subsequent to his extradition. The fact that he is within the jurisdiction as an extradited person does not exempt him from obedience to the laws. But the distinction noted by the court may be thought to be open to another objection. It assumes that in

order to be a fugitive from justice, the criminal must have come voluntarily into the state from which his surrender is demanded, or have sought asylum there. For, it is to be remembered that when he was brought into Indiana on rendition process it was from Ohio, and he could not therefore alleg- on that ground that he did not flee from Michigan. As a rule, proof of seeking asylum is not necessary under treaties; and it certainly is not so in rendition under the Constitution, which only requires that he shall be 'found.' He may be inveigled or deceived into coming into the jurisdiction, or may be there as the result of casualty. It has been held that even the employment of legal processes or of legal violence invests him with no personal privilege which he can set up as against the demands of justice, unless, where legal processes are employed, the law confers upon him such immunity. Such immunity the court did not hold to exist in interstate rendition. On the contrary it referred with disapproval to the case cited from Binns' Justice to the effect that a person delivered up by one state to another cannot be given up to a third state without having had an opportunity to return to that which surrendered him. The court observed that that case was decided by the court of quarter sessions of Philadelphia, and was therefore of little authority, and cited against it the opinion of Chief Justice Gibson in Dows' case. The decision of the Supreme Court of Indiana may, therefore, be held to have involved the rejection of the theory that, where one of the United States obtains possession of a criminal by rendition proceedings, it holds him for the sole purpose of trying him on the charge upon which he was given up."

34 After commenting on the above cases, Mr. Moore on Extradition, Sec. 646, says: "Considering the case solely from the point of view of the prisoner, of what right can it be said that he is deprived by his delivery up to a third state? It is not his right to have the question of his surrender determined by the Governor of any particular state. That question is, under the Constitution, to be determined in any state, in which he may be 'found.' This does not mean that, having once been found in a certain state, he is entitled thereafter to have the question of his rendition for all prior offenses determined by the Governor of that state, until he shall have left its jurisdiction voluntarily. Yet this is precisely what is signified by the right of return to the jurisdiction of the surrendering state, as held to exist in extradition cases; the reason being that the fugitive, when recovered, was under the protection of the surrendering nation. This principle possesses no relevancy to the states of the United States."

Relator also relies on the case of Hyatt v. New York, 188 U. S. 691. In that case the question presented in this case was not involved, but the sole question presented and decided was, that Hyatt not having been in Tennessee at the time of the alleged commission of the offense charged, he was not a fugitive of justice from Tennessee—that not having been in the State he had not fled from it, and the question of whether one who has fled from a state after the alle-ed commission of an offense and been extradited from one state

to another, can then be extradited to a third state was not discussed or mentioned, consequently that case cannot be held to decide any question here involved.

So far as the authorities go, we have the Daniels case, decided by the quarter sessions court in Philadelphia, and Mr. Spear on Extradition, holding that one cannot be extradited to a third state on the one hand, and we have the cases of Suydam v. Sennott, de-
35 cided by the Illinois courts, and then by Judge Drummond of the U. S. Circuit Court; the case of Hackney v. Welsh, decided by the Supreme Court of Indiana (107 Ind. 25), and Mr. Moore on Extradition, holding that a person who has been brought into a state by force can be extradited to a third state.

Church, in his work on Habeas Corpus, Sec. 472, holds: "A fugitive brought by requisition from another state may be surrendered to a third state." Cyc. Vol. 19, page 99, says the rule is that "as a state to which a person has been illegally brought may hold him to answer for his offenses against it, it may arrest and surrender him on extradition proceedings to answer for his offenses against another state." And in Brown's case, 28 Fed. Rep. 653, in which case Brown had committed an offense in Pennsylvania and fled to Canada, he was induced by duplicity and fraud to go into New York temporarily, and was arrested. It was held that the Governor could and should honor the requisition of the Governor of Pennsylvania. So it may be said that the weight of authority sustains the action of Governor Colquitt in granting the requisition in this case, and his act was not illegal. Again, 19 Cyc. 85, says: "As the Constitution, however, applies only to fugitives from justice, a state may in the exercise of its reserved sovereign power provide for the surrender of persons indictable for crime in another state, but who have never fled from it." And this rule is supported by State v. Hall, 115 N. C. 811, and In re Mohr, 73 Ala. 503, and other cases, and we see no reason why such is not a sound proposition of law. Before the forming of the Union, each state was a separate and independent sovereignty, and in forming the Union they parted with only such sovereign power as was ceded to the general government—all other powers of sovereignty inherent in them were reserved to each state, and we can see no good reason why a state can not provide for the surrender of persons charged with crime in a sister state not
36 provided for in the cession to the Federal Government or in furtherance of the ceded power. Our state has provided in Art. 1088 C. C. P.: "A person charged in another state or territory of the United States with treason, felony, or other crime, who shall flee from justice and be found in this state, shall, on demand of the executive authority of the state or territory from which he fled, be delivered up to be removed to the state or territory having jurisdiction of the crime."

When relator was indicted in Georgia, and the authorities of that state, ascertaining that she had fled from that state, began to look for her they found her in Texas. To what state could or should they apply for her extradition but the state of Texas. No other state had jurisdiction of her person at that time, and no other could

at that time grant extradition process. The rule stated by Mr. Spear that "as she was brought here on extradition, if she chooses to stay here and does stay here, Georgia would have no means of getting possession of her person and bringing her to justice for an offense committed in that state," we do not believe to be the law, for it would nullify and render ineffective the plain intent and purpose of the states in ceding authority to the Federal Government the right to provide for extradition of persons charged with crime from one state to another state. It was not intended to create an asylum under circumstances from which a person charged with crime could not be extradited, but the reverse is true, that no asylum should be provided by any state or territory.

The language of our statute is in accord with the provisions of the Federal Constitution, is violative of no provision thereof, and specifically grants to the Governor of this State the authority to issue the requisition whenever a person charged with crime in another state is found within the borders of this state, and our Gov-
37 ernor having acted in conformity with and under the authority of the statutes of this State, which are in accord with the Federal Constitution, we are of the opinion he committed no error in honoring the requisition, and the relator is remanded.

The judgment is affirmed.

HARPER, *Judge.*

(Delivered January 13, 1915.)

Davidson, J., dissents.

(Endorsed: No. 3370. Ex Parte Ida May Innes, Appellant vs. The State of Texas, Appellee. Appeal from Bexar County. Affirmed. Opinion by Harper, Judge. Davidson, J., dissents. Filed in Court of Criminal Appeals at Austin, Texas, Jan. 13, 1915. E. P. Smith, Clerk.)

From Bexar County.

No. 3370.

Ex Parte Ida May Innes.

Dissenting Opinion.

I have been unable to agree with my brethren in the disposition of this case. They have discussed questions that are not, in my judgment, germane, and I shall pass those without discussion.

The relator was extradited from the State of Oregon to Texas at the request of the Governor of Texas to answer a charge of murder. She was brought to San Antonio, tried and acquitted of murder. The grand jury also indicted her for conspiracy. Upon acquittal for the homicide, the conspiracy case was dismissed. She was not, however, granted her freedom, but held by order of the court to await extradition demands from the State of Georgia. Resort to writ of habeas corpus was had to obtain release. This was

refused. This is a sufficient statement of the facts to discuss
38 the questions in hand.

The only contention I purpose to discuss is based upon the fact that relator is not a fugitive from justice in Texas from the State of Georgia, because she was brought from the State of Oregon to Texas under the extradition process, that is, by the strong arm of the law, and her presence in Texas was not of her own volition or voluntary act. The Federal Constitution provides: "A person charged in any state with treason, felony, or other crime who shall flee from justice and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up to be removed to the state having jurisdiction of the crime." This clause of the Constitution not being self-executing, see Hyatt v. Cochran, 188 U. S. 691, 47 L. Ed. at page 708; Kentucky v. Dennison, 24 Howard, 66 at page 104, 16 L. Ed. 717-728; Roberts v. Reilly, 116 U. S. 80, Congress passed the following statute, Section 5278: "Whenever the executive authority of any state or territory demands any person as a fugitive from justice, of the executive authority of any state or territory to which such person has fled, and produces a copy of an indictment found, or an affidavit made before a magistrate of any state or territory, charging the person demanded with having committed treason, felony or other crime, certified as authentic by the Governor or chief magistrate of the state or territory from whence the person so charged has fled, it shall be the duty of the executive authority of the state or territory to which such person has fled, to cause him to be arrested and secured, and to cause notice of the arrest to be given to the executive authority making such demand, or to the agent of such authority appointed to receive the fugitive, and to cause the fugitive to be delivered to such agent when he shall appear. If no such agent appears within six months from the time of the arrest, the prisoner may be discharged. All costs or
39 expenses incurred in the apprehending, securing, transmitting such fugitive to the state or territory making such demand shall be paid by such state or territory."

This case, of course, arose under this section of the Acts of Congress. There are many decisions in the United States, both federal and state, construing the congressional act from various standpoints. There are few cases, however, in point on the particular question here raised, and so far as I have been enabled to discover the case of Suydam v. Sennott, 20 Albany Law Journal, 230, is the main case which holds that relator would be subject to extradition under the facts of this case. Hackney v. Welsh, 107 Ind. 253 is cited in support of the Suydam case, but in my judgment it does not support it. In the Suydam case, as in this case, the parties were by compulsory process brought into the asylum state. The party was not there of his own volition or act. In Hackney v. Welsh, supra, the extradited party or the party sought to be extradited, was in Indiana of his voluntary act, and that is emphasized in the opinion of Judge Elliott. In that case the party came from Michigan to Indiana of his own volition and was there arrested, and was in

Indiana at the time of the demand of the Michigan executive for his extradition. After the extradition papers reached Indiana the party escaped from jail and went to Ohio, and was subsequently extradited from Ohio to Indiana. The court held, as he came into Indiana of his voluntary act and had escaped after papers had reached Indiana from Michigan, he was subject to extradition. So it will be plainly seen that case has but little, if any, application here. The authorities, generally speaking, are opposed to Suydam case, supra, and hold that the act of the alleged fugitive coming into the asylum state must be voluntary and not by compulsion. This, as I understand, was the holding in the Indiana case, supra. Mr. Spear, in his work on Extradition, pages 558 to 571 reviews the cases then in existence, and criticises sharply the opinion in
40 the Suydam case as being incorrect, and reaches the conclusion that in order to authorize the extradition of the party he must have come into the asylum state of his own volition. In other words, he must have fled into the asylum state. It might be entertaining to follow the reasoning of the decisions and of Mr. Spear, but those who desire to do so can read these authorities. I do not care to write at length in regard to the course of such reasoning. The view expressed and entertained by Mr. Spear is also to be found in Hyatt's case, supra, in an opinion by Mr. Justice Peckham of the Supreme Court of the United States, who uses this language: "It speaks of a demand by the executive authority of a state for the surrender of a person as a fugitive from justice, by the executive authority of a state to which such person has fled, and it provides that a copy of the indictment found, or affidavit made before a magistrate of any state charging the person demanded with having committed treason, etc., certified as authentic by the Governor or chief magistrate of the state or territory from whence the person so charged has fled, shall be produced, and it makes it the duty of the executive authority of the state to which such person has fled to cause him to be arrested and secured. Thus the person who is sought must be one who has fled from the demanding state, and he must have fled (not necessarily directly) to the state where he is found. It is difficult to see how a person can be said to have fled from the state in which he is charged to have committed some act amounting to a crime against that state, when in fact he was not within the state at the time the act is said to have been committed. How can a person flee from a place that he was not in? He could avoid a place that he had not been in; he could omit to go to it; but how can it be said with accuracy that he has fled from a place in which he had not been present?"

If relator could not have fled from the state of the alleged crime because of his want of presence in that state, how can
41 it be said that he fled into the asylum state when he was carried there by the strong arm of the law without any volition on his part or against his will. The Act of Congress proceeds upon the theory that the act of the party in fleeing from the demanding state and fleeing into the asylum state is voluntary. It excludes the idea of compulsion or duress. If flight is a voluntary

act, then it could not be imputed to him as a voluntary act that he had been carried by the over-powering command of official authority into a state as his voluntary act. It occurs to the writer that the conclusion is irresistible, that Mr. Justice Peckham's inquiry must be answered to the effect that, before a party is a fugutive in the asylum state, or has fled to the asylum state, that he must himself do so voluntarily and not be carried by official authority. This is compulsion and in the nature of duress. It robs a party of all volition; in fact it is not his act. If it requires flight from the demanding state, then by the clear reading of the act of Congress it requires flight into the asylum state. The language is the same, is used in the same sense in both instances in the Act of Congress, and to the mind of the writer there seems to be no escape from the conclusion that if it must be the voluntary act of the alleged fugitive in leaving the demanding state, it must also be his voluntary act in being in the asylum state. This is clearly the reasoning in the Indiana case, supra. It is too well understood for discussion, that words and terms are to be taken in their ordinary and accepted sense, understanding and meaning. To avoid this the legislative authority must give the terms and words a different meaning from such common acceptation. This is a statutory rule in Texas, and seems to be the rule everywhere in civilized countries. Congress did not see proper to change the meaning of the words "flight," "fled," or "fugitive," and give those words a different meaning from their ordinary acceptation. The legislative authority
42 may give particular meaning to words, and the courts would usually have no authority to give meaning different from that embodied in the legislative act. If the act defines them differently from the common acceptation, that definition will be accepted by the courts, otherwise we go to the ordinary meaning of the words, terms or language. The clause of the federal constitution quoted is not self-executing, therefore it took the act of Congress to put it into operation. That body was clothed with supreme authority in the matter, and in its wisdom saw proper to enact the statute quoted and prescribe the conditions upon which the extradition may occur between the states. The courts, both state and federal, are bound by the Act of Congress, and should follow the intent with which it was enacted. The statute is of such character as requires it to be strictly construed. Ex Parte Morgan, 20 Fed. Rep. 298; Roberts v. Reilly, 116 U. S. 80. The Act of Congress does not militate against the sovereignty of the states, and could not be held to do so. The comity between states is to be found in the federal constitution, and properly enacted into legislation under such delegated authority. The states of the Federal Union are sovereign, and as an act of sovereignty created the federal constitution and delegated the authority therein specified. This does not change or alter the sovereignty but emphasizes it in the state. The states clothed the federal government with authority to do this particular thing, as well as many other things. This was a solemn compact entered into by the states of the Federal Union for the ulterior purpose of carrying out the will of the high contracting

parties. It was intended to bring about harmonious rule of action, and Congress, enacting this legislation, did so under the authority of the states of the federal Union. To that extent we may say that Congress is the supreme authority, and in the sense indicated this can be said to be true, and every state in the Union stands
43 pledged to abide the solemn compact in good faith. These provisions of the Constitution not being self-executing, it devolved upon Congress to put that clause into operation and effect, and the methods and plans devised by such legislation *is* and ought to be binding until Congress sees proper to change it or otherwise provide. It has said, that a party to become a fugitive must have fled from the demanding state; second, to justify the authority of the demanding state to extradite, the alleged fugitive must have fled into the asylum state. The facts in this case exclude flight into Texas by relator, and proves beyond question that she was brought here under extradition demand. Having been freed from the accusation against her in Texas, she did not therefore become a fugitive from justice in Texas from the State of Oregon, or from the State of Georgia. Her presence in Texas was not voluntary but compulsory. I do not care to discuss a state of case which would have arisen had she been discharged from custody and chosen to remain in Texas as her asylum or home. This she did not and was denied the privilege or right so to do. She was under arrest and compulsion from the time she was taken in custody in Oregon on extradition demand from Texas until h[illegible] arrest on the demand of Georgia, and that custody is still existent. My brethren have injected into this case a discussion, to some extent, of the right of Texas to exercise authority over the relator for offenses for which she was not extradited. That question is not in this case. Nothing of the sort was raised nor is it here raised. Texas had disposed of the relator as to all demands either by an acquittal of murder or dismissal of the case of conspiracy, therefore there was nothing remaining in Texas to which she might be subject to prosecution. The only question here presented and discussed is, whether she had fled into Texas as an asylum after having fled from the state of Georgia. It might be entertaining to review the cases and
44 discuss the matter more at length, but I do not deem it worth while. The language of the Act of Congress is plain, and, as I understand it, needs but little comment. She was in Oregon. This language would seem all sufficiently plain and ought to control. There are authorities which might be cited, but the reasoning of Mr. Spear has not been answered, and, in my judgment, will not be correctly answered; and until the Supreme Court of the United States has authoritatively held the other way, I shall believe the Act of Congress means, when it speaks of fleeing from the demanding state and fleeing into the asylum state, the voluntary act of the alleged fugitive, and it does not mean that by being compelled by force of authority to come into the state would constitute fleeing into the state. Whether this Act of Congress should be the proper rule or not I am not concerned. As Congress has acted, such act is binding. So believing I cannot agree with my brethren and,

therefore, most respectfully enter my dissent, believing that the relator ought to be discharged from custody.

DAVIDSON, *Judge.*

Filed January 13, 1915.

Endorsed: No. 3370. Ex Parte Ida May Innes. Appellant vs. The State of Texas, Appellee. Appeal from Bexar County. Dissenting opinion by Davidson, Judge. Filed in Court of Criminal Appeals at Austin, Texas, Jan. 13, 1915. E. P. Smith, Clerk.

45 In the Court of Criminal Appeals for the State of Texas, October Term, 1914.

No. —.

Ex Parte Ida May Innes.

Relator's Motion for Rehearing.

Now comes Ida May Innes, relator herein and moves the court to set aside its judgment rendered herein, remanding *him* to the custody of the Georgia authorities for extradition to Georgia and affirming the judgment of the court below, and to grant her a rehearing herein, and on such rehearing, to render judgment discharging her from custody for the following reasons, to-wit:

First.

This court erred in holding that under the undisputed evidence that relator was a fugitive from justice under the extradition statute passed by the Congress of the United States, being Section 5278 of the Revised Statutes of the United States.

Second.

This court erred in affirming the judgment of the court below, because the undisputed evidence showed that relator was not a fugitive from justice within the meaning of Section 5278 of the Revised Statutes of the United States, in that, the undisputed evidence showed that relator had not voluntarily come into the State of Texas, but that *he* was forcibly brought into the State of Texas under extradition proceedings upon the warrant of extradition issued by the Governor of Oregon upon a requisition made upon
46 him by the Governor of Texas for the extradition of relator; that having thus been forcibly brought into Texas and against her will, she did not flee into the State of Texas within the meaning of said act of Congress.

Wherefore relator prays that *he* be granted a rehearing herein and that, on such rehearing, this court render judgment discharging her from custody.

SWEARINGEN & WARD,
JOHN H. BICKETT, Jr.,
Attorneys for Relator.

Argument.

In our original brief in this case we admitted that in International Extradition cases a prisoner could only be tried for the offense for which such prisoner was extradited, but that in cases of Interstate Extradition there was a want of harmony between the decisions of the different states as to whether or not a prisoner could be put upon trial for a different offense than the one for which such prisoner had been extradited; we admitted, however, that this court had followed that line of cases which holds that in Interstate extradition cases the prisoner can be put upon trial for other offenses than the one for which the extradition was obtained. We cited authorities upon those propositions, not that we regarded them as pertinent to the only issue presented in the case at bar, but only as an illustration to show that if courts of eminent respectability disagree upon that proposition, such disagreement presented a very strong argument in support of the issue contended for by us.

The court in its opinion discusses at great length the line
47 of cases hereinabove referred to, but we insist that they are totally inapplicable to the issue at bar, other than as herein stated. The only issue in this case is as to whether or not, relator, within the meaning of the Act of Congress, fled into this State, when she was brought into this State forcibly, involuntarily and solely by virtue of extradition proceedings.

There certainly can be no dispute as to the proposition that the Act of Congress alone regulates the power of a Governor to extradite a citizen; that the Act of Congress prescribes the persons, the conditions, the terms and the circumstances under which a citizen can be extradited; there ought to be no disagreement over the proposition that, if a person does not come within the express language of the Act of Congress, the Governor has no power to extradite her.

This court, when the cases cited by it are thoroughly analyzed, really presents but one single case which even remotely sustains the conclusion arrived at by the court. An examination of that case discloses that the reasoning and the conclusion therein reached were predicated upon the proposition that the Act of Congress providing for extradition was more rigid in its requirements than the Constitution of the United States bearing upon that subject, or in other words, that the Constitution was broader than the Act of Congress. That decision was rendered before the decision was rendered in the Hyatt case and the court rendering the decision did not have the benefit of that case. As we construe the case referred to, we gather that the court undertook to hold that there was a conflict between the Act of Congress and the Constitution of the United States and in arriving at its decision it rejected so much of the Act of Congress as it deemed conflicted with the Constitutional provision.

We do not think that it is the province of a state court to
48 declare unconstitutional an Act of Congress that relates exclusively to a subject matter of which Congress alone has jurisdiction. Certainly no Federal court from the Supreme Court down

to the district court has ever held the Act of Congress to be unconstitutional or void in whole or in part. In addition to that, we think the interpretation that Congress has put upon the Federal Constitution is the correct and proper one and certainly that construction ought to be binding upon this court until some court of the United States having jurisdiction thereof, has ruled to the contrary. The Supreme Court of the United States all along, in the many cases brought before it, has never once intimated that there was any conflict between the Act of Congress and the Constitution; but has always acted upon the theory that, as the constitutional provision was not self-enacting, the Act of Congress relating thereto was the proper legislation carrying into effect the constitutional provision.

The Supreme Court of the United States has always held that no person can be extradited unless such person comes squarely within both the letter and the spirit of the Act of Congress; that is to say, the Act of Congress is a special law and can only be made applicable to conditions and persons falling clearly and unmistakably within its letter and spirit.

We wish to impress another thought upon the court which is, that the liberty of a citizen is involved, and where such is the case, if there be any reasonable doubt as to whether or not the law authorizes, under a given state of facts, the extradition of such person, then the doubt should be resolved in favor of the liberty of the citizen and the extradition of such citizen should be prevented.

The Act of Congress is so plain that it does not occur to us that it can be made plainer by any appeal to reason or use of logic or argument.

The Statute clearly means what it says, that he must have
49 fled into the State where he is found before he can be a fugitive from justice within the meaning of said Act of Congress.

We earnestly, but most respectfully, ask this court to consider carefully the dissenting opinion of Associate Justice Davidson, in this case. We adopt it as a part of our argument, and we sincerely hope that this court will give it a thorough and dispassionate consideration.

We do not feel that we can add anything to this motion by any further argument or citation of authorities and we can see no use in our protracting this argument.

We do not feel that we are going out of the record when we say to this court that since relators in the month of August, A. D. 1914, were quietly and evenly pursuing the tenor of their lives upon a little farm in Oregon, when and where they were arrested by virtue of a warrant of extradition issued by the Governor of Oregon upon a requisition made therefor by the Governor of Texas; that by virtue thereof, they and their two children, five or six years of age, were forcibly, by virtue thereof, taken from their little home, which was left vacant and untenanted, and were brought to Bexar County and incarcerated in the jail thereof, in order that they might answer to such indictments as might be preferred against them by the grand juries of Bexar County; that ever since August they have been incarcerated in that jail, with their little children torn from them, and

an abandoned home going to rack and ruin; that the grand juries of Bexar county, in October, presented indictments against them for murder and conspiracy to murder; the State was without any evidence to convict them of either charge; so the State was forced to dismiss the conspiracy charges, and by juries they were acquitted of the murder charges.

It would certainly seem to the calm and unprejudiced mind that, when these people had undergone all this suffering and privation, humiliation and disgrace, that when these people had
50 answered to every accusation that Texas could bring to bear upon them, they would be entitled to their discharge and be permitted to return to what may be left of their little farm in the State of Oregon; but, no, Texas having nothing against these people, her Governor has undertaken to extradite these unfortunate people to Georgia to answer a supposed crime in that State, where, we risk nothing in the presumption, that the people behind this persecution have no more testimony in Georgia than they had here in Texas. These prosecutions have broken these people both in health and money, and they have gone in this fight for their liberty as far as they are financially able to go.

If this court remands them to Georgia there is no hope for them except many months of continued confinement in the jail of Georgia.

We do not believe that we are violating the proprieties of this court in presenting the above to this court; but if this court should be wrong in its interpretation of the Act of Congress, we present the above to call the attention of the court to the great wrong and injustice which may be done these people, and the great suffering that an erroneous construction of the statute would entail upon them.

We admit that, if the statute is clear and these people under the statute, have no right to their liberty, then there is no alternative but for them to endure with resignation and patience, their still further confinement and their still greater suffering. But is this court so absolutely certain that its interpretation of the statute is right?

In behalf of these much abused and suffering people, with all the energy and zeal of our nature, we respectfully but most urgently ask this court to carefully, calmly, dispassionately and deliberately review its judgment, again examine the statute, analyze its
51 plain words and arrive at its true intent and meaning, and if this court has a doubt of the correctness of its interpretation of the statute, we beseech the court to give us the benefit of that doubt, as under the law, we are entitled to that benefit.

We, in no manner attack the judgment of this court or assume any improper criticism of it; we know and feel that this court only desires (to try out the true intendment of the law) and feeling, as we do, that the interpretation of the court of the statute is wrong, with the utmost deference and respect, we differ with the court in its interpretation and we earnestly request of the court a reexamination and a reconsideration of the question.

Feeling confident that a reexamination and a reconsideration of the matter will result in a different interpretation of the Act of Congress, we, therefore, ask that a rehearing herein be granted, and that

upon such rehearing these people be discharged absolutely from custody and restored to their freedom, which was unjustly taken from them in August of last year, which deprivation has continued to this hour.

Respectfully submitted,

SWEARINGEN & WARD,
JOHN H. BICKETT, JR.,
Attorneys for Relator.

Endorsed: No. 3369. In the Court of Criminal Appeals, State of Texas. Ex Parte Victor E. Innes. Relator's motion for rehearing. Filed in the Court of Criminal Appeals at Austin, Texas, Jan. 28 1915. E. P. Smith, Clerk.

52 WEDNESDAY, February 10th, A. D. 1915.

No. 3370.

EX PARTE IDA MAY INNES.

Appeal from Bexar County.

Rehearing overruled. No written opinion.

This cause came on to be heard on the appellant's motion for rehearing, and the same being considered, it is ordered, adjudged and decreed by the court that said motion be and the same is hereby in all things overruled.

Petition for Writ of Error and Order Allowing It.

The Court of Criminal Appeals of the State of Texas.

EX PARTE IDA MAY INNES, Plaintiff in Error,
vs.
JOHN W. TOBIN, as Sheriff of Bexar County, Texas, Defendant in Error.

To the Honorable Associate Justice- of the Supreme Court of the United States:

Now comes Ida May Innes, the above named relator and plaintiff in error, by *his* attorney, R. H. Ward, and complains and alleges that she is a citizen of the United States of America; that in the above entitled matter and which was numbered and entitled on the docket of the Court of Criminal Appeals of the State of Texas,
53 No. 3370, Ex Parte Ida May Innes, appellant vs. The State of Texas, appellee, on the 10th day of February, A. D. 1915, final judgment was rendered against your petitioner by the Court of Criminal Appeals of the State of Texas, that being the highest court possessing criminal jurisdiction and of the subject matter in said proceeding in the State of Texas, wherein it was adjudged that re-

lator, plaintiff in error, within the meaning of Section 5278 of the Revised Statutes of the United States, was a fugitive from justice from the State of Georgia in the State of Texas, and was subject to be extradited from the State of Texas to the State of Georgia to answer to an indictment found against *him* by the grand jury in the City of Atlanta, State of Georgia, and that the warrant of extradition issued by the Governor of Texas upon the requisition of the Governor of Georgia for the extradition of relator to Georgia, was a valid warrant, and said court remanded relator to the custody of John W. Tobin, sheriff of Bexar County, Texas, in order that he might be turned over by him to one J. M. Starnes, who had been appointed as agent of the State of Georgia to transport relator to Georgia; that said judgment of the Court of Criminal Appeals of the State of Texas, who rendered upon the undisputed evidence and upon the agreed statement of facts, that relator, plaintiff in error, on the 18th day of August, 1914, was a resident citizen of the State of Oregon; that prior to the 18th day of August, 1914, the Governor of Texas made his requisition upon the Governor of Oregon for the extradition of plaintiff in error to the State of Texas; that the Governor of Oregon granted said requisition and issued his warrant for the extradition of plaintiff in error to the State of Texas; that in pursuance of said extradition proceedings, plaintiff in error, together with her husband, Victor E. Innes, was arrested in the State of Oregon on the 18th day of August, 1914, and by virtue thereof brought and conveyed by the agent of Texas to Bexar
54 County, Texas, and then and there committed to the jail of said County, where she has continuously been from that date to the present time; that subsequently the grand jury of Bexar County, returned several indictments against plaintiff in error; that all of said criminal cases against her were finally disposed off, either by trials or dismissals and that there are no other charges pending against her for violation of the laws of Texas; that instead of discharging her upon the termination of all criminal proceedings against her in Texas, she was arrested by virtue of the extradition warrant issued by the Governor of Texas upon the requisition of the Governor of Georgia. To secure her release from this imprisonment, habeas corpus proceedings were instituted in the district court of Bexar County, State of Texas, and from a judgment remanding her to the custody of John W. Tobin, sheriff of Bexar County, Texas, she prosecuted an appeal to the Court of Criminal Appeals of the State of Texas.

The evidence was undisputed and showed that plaintiff in error had not voluntarily come into the State of Texas but was brought into the State against her will, forcibly and by virtue of the extradition proceedings aforesaid.

The said Court of Criminal Appeals under the above undisputed facts adjudged and determined that plaintiff in error was a fugitive from justice from the State of Georgia within the meaning of said Section 5278 of the Revised Statutes of the United States and remanded plaintiff in error to the custody of the said John W. Tobin, sheriff of Bexar County, Texas, in order that she might be extradited

to the State of Georgia; all of which appears in the record, opinion and final judgment of said court of Criminal Appeals, refusing to discharge plaintiff in error from custody and remanding her to the custody of John W. Tobin, sheriff of Bexar County, Texas, whereby manifest error has happened to the great damage of your petitioner.

55 Wherefore your petitioner prays for the allowance of a Writ of Error from the Supreme Court of the United States to the Court of Criminal Appeals of the State of Texas, and the judgment thereof, to the end that the record in said matter may be removed into the Supreme Court of the United States, and the error complained of by your petitioner, may be examined and corrected and said judgment be reversed and your petitioner discharged and that said judgment be superceded; and your petitioner will ever pray.

Petitioner, IDA MAY INNES,
By R. H. WARD, *Her Attorney.*

The Writ of Error as prayed for in the foregoing petition is hereby allowed, May 5, 1915.

JOSEPH R. LAMAR,
Associate Justice of the Supreme Court of the United States.

The writ of error as prayed for in the foregoing petition is hereby allowed, this the — day of March, A. D. 1915, the writ of error to operate as the supersedeas and the bond for that purpose is fixed at the sum of — Dollars, dated at Washington, D. C., this the — day of March, A. D. 1915.

____ ____,
Associate Justice of the Supreme Court of the United States.

Endorsed: Ex Parte Ida May Innes, pl'ff in error vs. Jno. W. Tobin, sheriff &c., defendant in error. Petition for allowance of writ of error from the Supreme Court of the U. S. to the Court of Criminal Appeals of the State of Texas. Filed in Court of Criminal Appeals at Austin, Texas, June 9th, 1915. E. P. Smith, Clerk.

56 *Writ of Error Bond.*

The Court of Criminal Appeals of the State of Texas.

No. 3370.

Ex Parte IDA MAY INNES, Relator, Appellant,
vs.
JOHN W. TOBIN as Sheriff of Bexar County, Texas, Respondent.

Know all men by these presents: that we, Ida May Innes, as principal, and American Surety Co., of New York, as sureties, are held and firmly bound unto the State of Texas and John W. Tobin, sheriff of Bexar County, Texas, in the sum of Fifty Dollars to be paid to the

said John W. Tobin, his successors, representatives and assigns, and to the State of Texas; to the payment of which, well and truly be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this the 29th day of April, A. D. 1915.

Whereas the above named plaintiff in error has prosecuted a writ of error in the Supreme Court of the United States to reverse the judgment rendered in the above entitled action by the Court of Criminal Appeals of the State of Texas, and which was numbered and entitled on the docket of the court of Criminal Appeals of the State of Texas, No. 3370, Ex Parte Ida May Innes, Appellant vs. The State of Texas, Appellee.

Now, therefore, the condition of this obligation is such that if the above named plaintiff in error shall prosecute her said writ of error to effect and answer all costs and damages if she shall fail to make good her plea, then this obligation shall be void; otherwise to remain in full force and effect.

IDA MAY INNES.

57 AMERICAN SURETY COMPANY OF NEW YORK,

By W. G. TOBIN, *Res. Vice-President.*

Attest:

P. H. SWEARINGEN,
Res. Asst. Secretary.

Signed, sealed and delivered in the presence of:

INEZ STEIN.
JOHN H. BICKETT, JR.

STATE OF TEXAS,
County of Bexar:

Before me, the undersigned authority, on this day personally appeared W. G. Tobin and P. H. Swearingen, known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same for the purposes and consideration therein expressed, and in the capacities therein stated.

Given under my hand and seal of office this the 29th day of April A. D. 1915.

[SEAL.] JOHN H. BICKETT, JR.,
Notary Public Bexar County, Texas.

Approved:

J. R. LAMAR,
Associate Justice Supreme Court. U. S.

Endorsed: No. 3370. The Court of Criminal Appeals of the State of Texas. Ex Parte Ida May Innes, Relator Appellant vs. John W. Tobin, as sheriff of Bexar County, Texas, Respondent. Writ of Error Bond. Filed in Court of Criminal Appeals at Austin, Texas, Jun- 9, 1915. E. P. Smith, Clerk.

58 *Assignment of Error.*

The Court of Criminal Appeals of the State of Texas.

Ex Parte Ida May Innes, Plaintiff in Error,
vs.
John W. Tobin, Sheriff of Bexar County, Texas, Defendant in Error.

Now comes, Ida May Innes, the said plaintiff in error and respectfully submits that in the record, proceedings, decision, and final judgment of the Court of Criminal Appeals of the State of Texas, in the above entitled matter there is manifest error in this, to-wit:

First.

The court erred in finding under the undisputed evidence that plaintiff in error was a fugitive from justice within the meaning of Section 5278 of the Revised Statutes of the United States and in remanding her to the custody of the defendant in error, John W. Tobin, as sheriff of Bexar County, Texas, to be by him delivered to J. M. Starnes, as agent of the State of Georgia in order that she might be transported by him to the State of Georgia upon an extradition warrant issued by the Governor of Texas upon a requisition made by the Governor of Georgia; the undisputed evidence showing that plaintiff in error, on or about the 18th day of August, 1914, was a resident citizen of the State of Oregon; that on the 18th day of August 1914, while in Oregon she was arrested upon an extradition warrant issued by the Governor of Oregon upon a requisition made upon him by the Governor of Texas and that by virtue thereof, she was transported from Oregon to Bexar County, State of Texas, and there confined in the jail of Bexar County, Texas, where she has been continuously ever since, having been extradited to answer certain criminal accusations preferred against her for a viola-
59 tion of the criminal laws of Texas; that subsequent to her extradition into Texas, she was indicted by the grand jury of Bexar County, Texas, and all of the criminal charges against her were disposed of by acquittals or dismissals; that after all the criminal cases and accusations preferred against her by the authorities of Texas, had been disposed of, instead of being discharged from custody she was immediately arrested by defendant in error, John W. Tobin, sheriff of Bexar County, Texas, upon a warrant of extradition issued by the Governor of Texas, authorizing her transportation to Georgia by the agent of Georgia J. M. Starnes, said extradition warrant having been issued upon a requisition made upon the Governor of Texas by the Governor of Georgia.

The undisputed evidence thus showing that plaintiff in error had not fled into the State of Texas, but having been brought here by a criminal process involuntarily and against her will, she was not a fugitive from justice within the meaning of the laws of the United States regulating the extradition of fugitives from justice and that

therefore the warrant of extradition issued by the Governor of Texas, under such circumstances is null and void, and the Court of Criminal Appeals erred in finding that she was a fugitive from justice and likewise erred in not discharging her from *his* unlawful imprisonment.

R. H. WARD,
Attorney for Plaintiff in Error.

Endorsed: Ex Parte Ida May Innes, Pl'ff in Error vs. Jno. W. Tobin, sheriff &c., Def't in Error. Assignment of Error. Filed in Court of Criminal Appeals at Austin, Texas, Jun- 9 1915. E. P. Smith, Clerk.

60 *Precipe.*

In the Court of Criminal Appeals of the State of Texas.

No. 3370.

Ex Parte Ida May Innes.

To the Clerk of said Court:

In accordance with rule 8 of the rules of the Supreme Court of the United States, you will incorporate in the transcript of the record in this cause the following papers:

1. Caption, both courts.
2. Petition for writ of habeas corpus.
3. Judgment of trial court.
4. Statement of facts.
5. Judgments of the court of Criminal Appeals.
6. Opinions, Court of Criminal Appeals.
7. Petition for writ of error and order allowing it.
8. Writ of Error bond.
9. Writ of Error.
10. Citation in error—original with return thereon.
11. Assignments of Error.
12. Certificate of Clerk.
13. Writ of habeas corpus and exhibits.
14. Order remanding relator.
15. Assignments error, court below.
16. Motion rehearing.
17. Order overruling motion rehearing.

R. H. WARD,
Attorney for Plaintiff in Error.

I hereby accept service of the within precipe and waive copy and agree that the above contains all the papers necessary for a decision of this cause.

C. C. McDONALD,
Ass't Att'y General, State of Texas.

Endorsed: Filed in Court of Criminal Appeals at Austin, Texas, Jun- 9 1915. E. P. Smith, Clerk.

61 *Certificate.*

THE STATE OF TEXAS:

I, E. P. Smith, Clerk of the Court of Criminal Appeals of the State of Texas, at Austin, do hereby certify that the above and foregoing contain a true and correct copy of the proceedings had in the Court of Criminal Appeals in cause No. 3370, Ex Parte Ida Man Innes, from Bexar County, as the same now appears of record and on file in my office.

In Witness Whereof, I hereunto set my hand and affix the seal of said Court this the 15th day of June A. D. 1915.

[Seal Court of Criminal Appeals of Texas.]

E. P. SMITH,
Clerk of the Court of Criminal Appeals of the State of Texas.

[United States internal revenue documentary stamp, series of 1914, ten cents, canceled 6/15, 1915. E. P. S.]

62 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the Court of Criminal Appeals of the State of Texas, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court of Criminal Appeals before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Ida May Innes, Appellant, and John W. Tobin, Sheriff of Bexar County, Texas, Appellee, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein any title, right, privilege, or immunity was claimed
62½ under the Constitution, or any treaty or statute of, or commission held or authority exercised under, the United States, and the decision was against the title, right, privilege, or immunity especially set up or claimed under such Constitution, treaty, statute, commission, or authority; a manifest error hath happened to the great damage of the said Appellant, Ida May Innes, as by her complaint appears. We being willing that error, if any

hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the fifth day of May, in the year of our Lord one thousand nine hundred and fifteen.

JAMES D. MAHER,
Clerk of the Supreme Court of the United States.

Allowed by

JOSEPH R. LAMAR,
Associate Justice of the Supreme Court of the United States.

[Endorsed:] Supreme Court of the United States. October Term, 1914. Ida May Innes, Plaintiff in Error vs. John W. Tobin, Sheriff of Bexar County, Texas. Writ of Error. Filed in Court of Criminal Appeals at Austin, Texas, Jun- 9 1915. E. P. Smith, Clerk.

63 UNITED STATES OF AMERICA, *ss:*

To John W. Tobin, Sheriff of Bexar County, Texas, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the Court of Criminal Appeals of the State of Texas, wherein Ida May Innes is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Joseph R. Lamar, Associate Justice of the Supreme Court of the United States, this fifth day of May, in the year of our Lord one thousand nine hundred and fifteen.

J. R. LAMAR,
Associate Justice of the Supreme Court of the United States.

On this 7th day of June, in the year of our Lord one thousand nine hundred and fifteen, personally appeared L. Allen before me, the subscriber, John H. Bickett, Jr., Notary Public, Bexar County, Texas, and makes oath that he delivered a true copy of the within

citation to John W. Tobin, Sheriff of Bexar County, Texas, Defendant in Error.

Sworn to and subscribed the 7th day of June, A. D. 190–.

[Seal Notary Public, County of Bexar, Texas.]

JOHN H. BICKETT, JR.,
Notary Public, Bexar County, Texas.

[Endorsed:] Filed in Court of Criminal Appeals at Austin, Texas, Jun- 9 1915. E. P. Smith, Clerk.

Endorsed on cover: File No. 24,815. Texas Court of Criminal Appeals. Term No. 532. Ida May Innes, plaintiff in error, vs. John W. Tobin, sheriff of Bexar County, Texas. Filed June 26th, 1915. File No. 24,815.

Office Supreme Court, U. S.
FILED
DEC 13 1915
JAMES D. MAHER
CLERK

Supreme Court of the United States.

OCTOBER TERM, 1915.

No. 532.

IDA MAY INNES, PLAINTIFF IN ERROR,

versus

JOHN W. TOBIN, SHERIFF OF BEXAR COUNTY, TEXAS, DEFENDANT IN ERROR.

In Error to the Court of Criminal Appeals of the State of Texas.

Brief of Plaintiff in Error.

R. H. WARD,
Attorney for Plaintiff in Error, Ida May Innes.
JOSEPH W. BAILEY,
Of Counsel for Plaintiff in Error.

Ludwig Printing Co., 421 Main Ave., San Antonio, Texas

Supreme Court of the United States.

OCTOBER TERM, 1915.

No. 532.

IDA MAY INNES, PLAINTIFF IN ERROR,

versus

JOHN W. TOBIN, SHERIFF OF BEXAR COUNTY, TEXAS, DEFENDANT IN ERROR.

In Error to the Court of Criminal Appeals of the State of Texas.

Brief of Plaintiff in Error.

Plaintiff in error, Ida May Innes, presented an application to the District Court of Bexar County, Texas, 37th Judicial District, for a writ of habeas corpus, alleging that she was restrained of her liberty in the jail of Bexar County, Texas, by defendant in error, John W. Tobin, Sheriff of Bexar County, Texas, and John M. Starnes, appointed by the Governor of the State of Georgia as its agent for the extradition of plaintiff in error to the State of Georgia, based upon a requisition made by the Governor of Georgia upon the Governor of the State of Texas. The

writ of habeas corpus was issued, and defendant in error, John W. T[illegible]n, Sheriff of Bexar County, and John M. Starnes, made their returns to the same, that plaintiff in error was restrained of her liberty, as alleged in the application for the writ of habeas corpus, attaching copies of said writs to their answers. (Trans., pp. 1-3).

The application alleged substantially that she was restrained of her liberty and confined by defendant in error by virtue of the order of said court, and a certain warrant of extradition issued by the Governor of Texas on a requisition made upon him by the Governor of Georgia, upon the grounds that your petitioner had committed a crime in the State of Georgia and that she was a fugitive from Georgia; that said warrant is in possession of defendant in error; that John M. Starnes was appointed the agent of the State of Georgia for the conveyance, or transportation, of plaintiff in error from the State of Texas to the State of Georgia, and that said Starnes was demanding that defendant in error surrender her to him by virtue of said warrant aforesaid; that said warrant of extradition and said extradition proceedings aforesaid, are wholly null and void, among other reasons, that plaintiff in error was never a fugitive from justice from the State of Georgia to the State of Texas, within the meaning and intent of the laws of the United States regulating extradition proceedings; that she resides in the State of Oregon, and while in that State, the Governor of Texas made a requisition upon the Governor of Oregon for her extradition to the State of Texas to answer a charge of murder in the State of Texas; that the Governor of Oregon honored the requisition of the Governor of Texas and issued an extradition warrant accordingly; that plaintiff in error was brought by virtue of said warrant from the State of Oregon, under arrest and has been continuously confined and restrained of her liberty by the Sheriff of Bexar County by virtue of said extradition

proceedings and indictments found against her in Bexar County, Texas, for the alleged crime for which she was extradited; that, after being extradited, she was indicted by the grand jury of Bexar County, and upon the day the application for habeas corpus was filed, she was acquitted of the crime for which she was extradited; that immediately, upon her acquittal, she was remanded to the custody of defendant in error to be turned over to the said Starnes, who will deport petitioner to Georgia by virtue of said warrant of extradition, issued by the Governor of Texas; that she has continuously been restrained of her liberty and is so, now, restrained of her liberty; that in consequence, she is not now, and never has been a fugitive from the State of Georgia to the State of Texas, and the extradition proceedings, above referred to, on account thereof, are wholly null and void. (Trans., pp. 1, 2 and 3).

The writ of habeas corpus was regularly issued and made returnable on the 17th of November, 1914.

Defendant in error made his return to the writ of habeas corpus and stated that he held plaintiff in error by virtue of said extradition warrant of the Governor of Texas issued on the requisition of the Governor of the State of Georgia and that said warrant is now in the hands of the said Starnes, and that he further held plaintiff in error by virtue of a verbal order of the court, and in obedience to said writ, then produced plaintiff in error in open court. (Trans., p. 7).

The cause was tried on the 18th of November, 1914, and plaintiff was remanded by order of the court to the Georgia agent; from this judgment plaintiff in error prosecuted her appeal to the court of Criminal Appeals of the State of Texas. (Trans., p. 8).

The Court of Criminal Appeals affirmed the judgment of the court below, Judge Davidson dissenting. (Trans., p. 15).

The majority opinion of the court is found in the record, pages 16 to 23; the dissenting opinion of Judge Davidson, on pages 23 to 28.

Plaintiff in error in due time presented to the Honorable Joseph R. Lamar, Associate Justice of this Court, an application for a writ of error to the Court of Criminal Appeals. The writ of error was duly allowed and perfected. (Trans., pp. 32 to 35).

The case is now before this court upon said writ of error to the Court of Criminal Appeals of the State of Texas.

Plaintiff in error prosecutes this writ of error upon the following assignment of error, filed in the Court of Criminal Appeals, as follows:

ASSIGNMENT OF ERROR.

FIRST.

"The court (Court of Criminal Appeals) erred in finding, under the undisputed evidence, that plaintiff in error was a fugitive from justice within the meaning of Section 5278 of the Revised Statutes of the United States and in remanding her to the custody of defendant in error, John W. Tobin, Sheriff of Bexar County, Texas, to be by him delivered to John M. Starnes, as agent of the State of Georgia, in order that she might be transported by him to the State of Georgia upon an extradition warrant issued by the Governor of Texas upon a requisition made by the Governor of Georgia; the undisputed evidence showing that plaintiff in error, on or about the 18th day of August, 1914, was a resident citizen of the State of Oregon; that on the 18th day of August, 1914, while in Oregon, she was arrested upon an extradition warrant issued by the Governor of Oregon upon a requisition made upon him by the Governor of Texas, and that by virtue thereof she was transported from Oregon to Bexar County, Texas, and there confined in the

jail of Bexar County, Texas, where she has been continuously ever since, having been extradited to answer certain criminal accusations preferred against her for a violation of the criminal laws of Texas; that, subsequent to her extradition into Texas, she was indicted by the grand jury of Bexar County, Texas, and all criminal charges against her were disposed of by acquittals or dismissals; that, after all the criminal cases and accusations preferred against her by the authorities of Texas had been disposed of, instead of being discharged from custody, she was immediately arrested by defendant in error, John W. Tobin, Sheriff of Bexar County, Texas, upon a warrant of extradition issued by the Governor of Texas authorizing her transportation to Georgia by the agent of Georgia, John M. Starnes, said extradition warrant having been issued upon a requisition made upon the Governor of Texas by the Governor of Georgia. The undisputed evidence thus showing that plaintiff in error had not fled into the State of Texas, but having been brought here by criminal processes, involuntarily and against her will, she was not a fugitive from justice within the meaning of the laws of the United States regulating the extradition of fugitives from justice; and that, therefore, the warrant of extradition issued by the Governor of Texas, under such circumstances, is null and void, and the Court of Criminal Appeals erred in finding that she was a fugitive from justice and, likewise, erred in not discharging her from her unlawful imprisonment." (Trans., pp. 36 and 37).

The case was tried in the court below upon an agreed statement of facts which, likewise, formed the basis of the judgment of the Court of Criminal Appeals. The statement of facts was duly agreed to by counsel for both parties and, likewise, approved by the court, it being agreed that the statements therein were proven, said agreed statements show:

FIRST.

The application for the writ of habeas corpus.

SECOND AND THIRD.

The returns to said writ of habeas corpus of defendant in error and of John M. Starnes.

FOURTH.

The appointment of said Starnes, as the agent of Georgia by the Governor of Georgia. (Trans., p. 11).

FIFTH.

The extradition warrant of the Governor of Texas.

SIXTH.

That plaintiff in error was restained of her liberty and was in custody by virtue of said above documents, which were attached to, and made parts of, the returns of defendant in error and of the said Starnes.

SEVENTH.

That the verbal order, referred to in the return of defendant in error, was an order made in open court by the judge, directing defendant in error to hold plaintiff in error in custody until the extradition warrant could be served upon her; and that subsequently the warrant was served, which vacated the verbal order.

EIGHTH.

It was further proven that plaintiff in error and her husband, Victor E. Innes at, and long prior to, the 18th day of August, 1914, were resident citizens of the State of Oregon; that prior to the 18th day of August, 1914, Gover-

nor Colquitt of Texas, made his requisition upon the Governor of Oregon for the extradition of plaintiff in error to the State of Texas; that thereupon the Governor of Oregon granted said requisition and issued his warrant for the arrest and the extradition of plaintiff in error to Texas, and appointed a deputy sheriff of Bexar County, as the agent of the State of Texas for the extradition of relator; that said extradition was granted by virtue of certain complaints, which were filed before a justice of the peace, in and for Bexar County, Texas, charging plaintiff in error with the crime of murder of one Alois Nelms Dennis and one Beatrice Nelms; that, in pursuance of said extradition proceedings, relator was arrested, together with her said husband, in the State of Oregon on the 18th day of August, 1914, and by virtue thereof brought and conveyed by said deputy sheriff to Bexar County, Texas, and then and there committed to the jail of said county, where she has continuously been from that day to the present time; that subsequent to her being committed to the custody of the Sheriff of Bexar County, as above stated, the grand jury of Bexar County, Texas, on the 10th day of October, A. D. 1914, returned into the District Court of Bexar County, Texas, indictments against her charging her with the crime of murder of said Alois Nelms Dennis and Beatrice Nelms, and, furthermore, preferred indictments against her, charging her with entering into a conspiracy to murder said parties; that, as soon as said indictments were returned, capiases were issued upon the same, and the same were read to the relator in the jail of said county; that, in each of said cases, said court allowed her bail and fixed the amount of her bail, but she was unable to give the same, and, consequently, remained in jail, as above stated; that, on Monday, the 16th day of November, A. D. 1914, relator was duly tried in the District Court of Bexar County, Texas, 37th Judicial District, upon all of the indictments preferred against her

for the murder, as above stated, before juries, and was duly acquitted of said offenses, and judgments of acquittal were duly and properly entered; that, thereupon, on said day, the District Attorney, duly, with the consent of the court, dismissed all of the indictments against relator for the crime of conspiracy to murder, as aforesaid, and judgments were entered accordingly; that relator and her said husband, Victor E. Innes, were extradited and brought into Texas, as aforesaid, by virtue of these extradition proceedings, as aforesaid, and were confined in the jail of Bexar County by virtue thereof; that she has been acquitted of all the charges preferred against her for a violation in any manner of the laws of the State of Texas, as above stated; that all of the criminal proceedings against her, so far as the State of Texas is concerned, have been fully concluded and determined, as hereinabove stated; that immediately, upon the disposition of the criminal cases against her, as above stated, she was arrested by virtue of the Georgia extradition proceedings, hereinabove set out, and incarcerated in the jail of Bexar County, as hereinabove stated, where she still remains; that, upon the determination of the criminal cases and charges against her, she was not afforded an opportunity to return to the State of Oregon, her home, but is restrained of her liberty in said jail, as herein detailed and set forth; that there are no other charges pending against her for the violation of the laws of the State of Texas. (Trans., pp. 10 to 14).

ARGUMENT.

The sole and only question presented to this court in this case is the proposition, "Is plaintiff in error, under Section 5278 of the Revised Statutes of the United States, under the above proven and admitted facts, a fugitive from justice from the State of Georgia to the State of Texas?"

All the facts being admitted, the determination of the

question is one purely of law. The facts show: that plaintiff in error was brought into the State of Texas from the State of Oregon, by virtue of the extradition proceedings, hereinabove set forth, forcibly and against her will, to answer such indictments and criminal charges as might be preferred against her by the State of Texas; that she was subsequently indicted for certain offenses by the grand jury of Bexar County, Texas, acquittals being had in some of these cases and all the other cases against her being dismissed; that there are no further criminal charges of any sort pending against her in the State of Texas; that, upon the conclusion and determination of all the criminal charges against her, instead of being discharged, before being permitted to leave the courthouse, and, without being given an opportunity to return to her home, she was arrested by virtue of an extradition warrant issued by the Governor of Texas upon a requisition made upon him by the Governor of Georgia, by virtue of which she was committeed to the jail of Bexar County to the custody of defendant in error, where she has continuously remained ever since.

Our contention is, that under these admitted facts, plaintiff in error was not a fugitive from justice within the meaning of the Act of Congress, and that, therefore, her detention by virtue of the extradition proceedings, aforesaid, was unlawful, and that she is entitled to her liberty.

Section 2 of Article 4 of the Constitution of the United States, is as follows:

> "A person charged in any State with treason, felony or other crime, who shall flee from justice and be found in another State, shall, on the demand of the executive authority of the State from which he fled, be delivered up to be removed to the State having jurisdiction of the crime."

This clause of the Constitution has been held by this court not to be self-executing in the following cases:

Hyatt v. Corkran, 188 U. S., 691; 47 L. Ed., 708.
Kentucky v. Denison, 24 Howard, 66.
Roberts v. Reiley, 116 U. S., 80.

This clause, as stated, not being self executing, Congress passed a law putting it into force.

The section of the law pertinent to the inquiry under investigation, being Section 5278 of the Revised Statutes of the United States, is as follows:

> "Whenever the executive authority of any State or territory demands any person as a fugitive from justice of the executive authority of any State or territory to which such person has fled, and produces a copy of an indictment found, or an affidavit made before a magistrate of any State or territory, charging the person demanded, with having committed treason, felony or other crime, certified as authentic by the Governor or chief magistrate of the State or territory from whence the person so charged, has fled, it shall be the duty of the executive authority of the State or territory to which such person has fled, to cause him to be arrested and secured, and cause notice of the arrest to be given to the executive authority making such demand, or to the agent of such authority appointed to receive the fugitive, and to cause the fugitive to be delivered to such agent, when he shall appear, * * * ."

The statute is so plain and unambiguous in its terms, that it seems a useless labor to demonstrate that which is self-evident from the law. The law clearly contemplates that in order to be a fugitive from justice, there must have been a voluntary flight, because the statute speaks of a demand of the executive authority of a State for the surrender of a person as a fugitive from justice by the executive authority of a State *to which such person has fled,* and it pro-

vides that the indictment or affidavit must be certified as authentic by the Governor of the State from whence *the person, so charged, has fled, etc.*, and it makes it the duty of the executive authority of the State to which such person has fled, to cause him to be arrested and secured.

As was said in the dissenting opinion of Judge Davidson in quoting from the opinion of Justice Peckham in the Hyatt case:

> "Thus, the person who is sought, must be one who has fled from the demanding State, and he must have fled, (not necessarily directly) to the State where he is found. It is difficult to see how a person can be said to have fled from the State in which he is charged to have committed some act amounting to a crime against that State, when in fact he was not within the State at the time the Act is said to have been committed. How can a person flee from a place that he was not in? He could avoid a place that he had not been in; he could omit to go to it, * * * ."

The above quotation by Judge Davidson, is from the case of Hyatt v. The People of the State of New York, 188 U. S., 691; 47 L. Ed., 662.

It will be observed that Judge Peckham, to give force to his construction of the statute, italicized the following words in his opinion: *"To which such person has fled, * * * from whence the person, so charged, has fled, to which such person has fled,"* and he winds up the discussion of that particular phase of the question, with the following words, "Thus the person who is sought, must be one who has fled from the demanding State and he must have fled (not necessarily directly) to the State where he is found."

To constitute one *a fugitive*, there must be a flight, or in other words, he must have fled from the one State into the other.

It certainly would be doing violence to the language em-

ployed in the statute, to hold that a person has fled into a State, when he is brought into such State by force, involuntarily, against his will, and by the strong arm of the law.

On page 558, Spear on Extradition, it is said:

> "When a defendant is brought into a State as a fugitive from justice, after acquittal or conviction, he cannot be surrendered to the authority of another State as a fugitive, but must be allowed an opportunity to return to the State in which he is domiciled."

Upon pages 561 to 571 will be found a very thorough discussion of the proposition embodied in the above.

United States Senator Patterson was indicted for a felony in South Carolina and, while in Washington engaged in his senatorial duties, his extradition was attempted by the State of South Carolina. The Supreme Court of the District of Columbia, upon writ of habeas corpus, held that he was not a fugitive from justice. This case is cited in Second Moore on Extration, Section 569.

In the note on page 308, Rorer on Interstate Law, it is said:

> "A person forcibly brought into a State from a sister State, is entitled to his discharge upon habeas corpus."

While not directly in point, but announcing principles analogous to the question at issue, without quoting from them, we would call the attention of the court to the following additional authorities:

State of North Carolina v. Hall, 28 L. R. A., 292.
State of Tennessee v. Jackson, 36 Fed., 258.
Ex parte Thaw, 214 Fed. Rep., 423, et seq.
Spear on Extradition, pages 558 to 571.
II Moore, page 920.
In re, Robinson, 29 Nebraska, 135.

State v. Simmons, 39 Kansas, 262.
State v. Hall, 40 Kansas, 338.
Re Cannon, 47 Michigan, 481.
Ex parte McKnight, 48 Ohio St., 588.
Ex parte Todd, 12 S. D., 386.

The dissenting opinion of Judge Davidson of the Court of Criminal Appeals is set forth in the Transcript, pages 23 to 28. In that opinion the question at issue is so ably and clearly presented, that we do not feel that we can add anything to it by way of argument; but we respectfully invite the attention of the court to it.

In conclusion, we respectfully insist that the judgment of the District Court of Bexar County, and of the Court of Criminal Appeals of the State of Texas, should be reversed, and that plaintiff in error should be absolutely discharged by the judgment of this court from further imprisonment.

Cause No. 533, Victor E. Innes, is a companion case to this case. And in that case there is an agreement on file, agreeing that whatever judgment is entered in this cause may be entered in that.

Respectfully submitted,

R. H. WARD,

Attorney for Plaintiff in Error, Ida May Innes.

JOSEPH W. BAILEY,

Of Counsel for Plaintiff in Error.

Office Supreme Court, U. S.
FILED
DEC 27 1915
JAMES D. MAHER
Clerk

IN THE

Supreme Court of the United States

October Term, 1915.

No. 532.

WILL MAY INNES, Plaintiff in Error,

vs.

JOHN W. TOBIN, SHERIFF OF BEXAR COUNTY, TEXAS, Defendant in Error.

In Error to The Court of Criminal Appeals of the State of Texas.

Brief of Defendant in Error

JOHN W. TOBIN,
Attorney for Defendant in Error, John W. Tobin, Sheriff Bexar County, Texas.

C. C. McDONALD,
Assistant Attorney General of the State of Texas,
Of Counsel for Defendant in Error.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1915.

No. 532.

IDA MAY INNES, PLAINTIFF IN ERROR,

vs.

JOHN W. TOBIN, SHERIFF OF BEXAR COUNTY, TEXAS, DEFENDANT IN ERROR.

In Error to the Court of Criminal Appeals of the State of Texas.

Brief of Defendant in Error

HUGH M. DORSEY,
Attorney for Defendant in Error, John W. Tobin, Sheriff Bexar County, Texas.

C. C. McDONALD,
Assistant Attorney General of the State of Texas.
OF COUNSEL FOR DEFENDANT IN ERROR.

INDEX TO BRIEF.

Cases cited in this Brief 3

Cases cited in the opinions of the Texas Court of Criminal Appeals, giving the pages said citations are shown in opinions found in the Transcript of Record 4

Abstract of this case 7

Brief of argument 10

INDEX TO CASES CITED.

Appleyard v. Commonwealth of Mass., 203 U. S. 222 ..... 14, 15
Ammens, ex parte, 34 Ohio St. 518 27

Bloch, 87 Fed. 981 18
Brown, ex parte, 28 Fed. 653 17
Burner v. Richter, 35 N. W. 9 19

Cannon, 47 Mich. 481 25
Coleman, ex parte, 113 S. W. 17 21
Code of Crim. Proc. (Texas), art. 1088 28
Commonwealth v. Hare, 36 Pa. Supr. Ct. 125 21
Commonwealth v. Hall, 9 Gray (Mass.) 262; 69 Am. Dec. 285 27
Constitution of U. S., sec. 2, art. 4 ..... 10, 13, 16, 24

Dickson, ex parte, 69 S. W. 943 21
Drew, Sheriff, v. Thaw, 235 U. S. 432 24

Galbreath, ex parte, 139 N. W. 1050 22
Hibler v. State, 43 Tex. 197 16
Hartman v. Aveline, 63 Ind. 344; 30 Am. Rep. 217 28

Innes, ex parte, 173 S. W. 291 10

Kurtz v. State, 22 Fla. 36; 1 Am. St. Rep. 173 27

Lascelles v. Ga., 148 U. S. 537 25

Mahon v. Justice, 127 U. S. 700 ..... 23, 25, 26
McKnight, ex parte, 48 Ohio St. 588 25

People v. Benham, 128 N. Y. Supp. 610 22
People ex rel. Sennot v. Suydam, 20 Alb. L. J. 230 29

Roberts v. Reilly, 116 U. S. 80 ..... 12, 13, 15, 16, 17, 18
Revised Statutes, U. S., sec. 5278 ..... 10, 13, 16, 19
Roberts, in re., 24 Fed. 132 27

State v. Hall, 115 N. C. 811, 28 L. R. A. 289, 20 S. E. 729 ..... 24, 27
State v. Hall, 40 Kan. 338 25
State v. Simmons, 39 Kan. 262 25
Sennot v. Suydam, 20 Alb. L. J. 230 29

Taylor v. Wise, 126 N. W. 1126 21
Tenn. v. Jackson, 36 Fed. 258 23
Thaw, ex parte, 214 Fed. 423 23
Todd, in re, 12 S. D. 386 25

White, 55 Fed. 54 ..... 18, 25
Williams, ex parte, 136 Pac. 597 22

CASES CITED AND CONSIDERED IN THE OPINIONS OF THE COURT OF CRIMINAL APPEALS OF THE STATE OF TEXAS IN THE CASE OF INNES.

CASES CITED IN MAJORITY OPINION.

	Pages in Transcript of Record
Baker vs. State, 43 Tex. Cr. Rep. 282; 65 S. W. 91; 96 Am. St. Rep. 871	18
Brookin vs. State, 26 Tex. App. 124; 9 S. W. 735	18
Brown (D. C.), 28 Fed. 653	22
19 Cyc. 85.	22
Constitution of U. S., Art. 4, Sec. 2	
Code Cr. Pro. (1911), Art. 1088 (Texas)	22
Cen. Dig., Secs. 51 and 53	
Cyc., Vol. 19, p. 97	18
Carr vs. State, 104 Ala. 4; 16 Southern 150	18
Commonwealth vs. Wright, 158 Mass. 149; 33 N. E. 82; 19 L. R. A. 206; 35 Am. St. Rep. 475	18
Church, on Habeas Corpus, Sec. 472	22
Cyc., Vol. 19, p. 99	22
Dec. Dig., Key 41	
Daniel Case, 4 Clark (Pa.) 49	22
Ham vs. State, 4 Tex. App. 666	18
Hope Case (Ex. Ch.) 10 N. Y. Supp. 28	

Hyatt vs. N. Y., 188 U. S. 691; 23 Sup. Ct. 456; 47 L. Ed. 657 ---- 21

Hackney vs. Welch, 107 Ind. 253; 8 N. E. 141; 57 Am. Rep. 101 ---- 22

Lascelles vs. Georgia, 148 U. S. 537; 13 Sup. Ct. 687; 37 L. Ed. 549 ---- 18

Lascelles vs. State, 90 Ga. 347; 16 S. E. 945; 35 Am. St. Rep. 216 ---- 18

Moore, on Extradition, Sec. 646 ---- 20, 21, 22

Mohr, in re, 73 Ala. 503; 49 Am. Rep. 63 ---- 22

Petry vs. Leidigh, 47 Nebr. 126; 66 N. W. 308 ---- 19

People vs. Cross, 135 N. Y. 536; 32 N. E. 246; 31 Am. St. Rep. 850 ---- 19

People, Ex. Rel. Suydam vs. Sennott, 20 Albany L. J. 230 ---- 19, 22

Revised St. U. S., Art. 5278 (Comp. St. 1913), Sec. 10126 ---- 16

Spear, on Extradition ---- 22, 23

State vs. Healy, 89 Iowa 94; 56 N. W. 283 ---- 18

State vs. Walker, 119 Mo. 467; 24 S. W. 1011 ---- 19

State vs. Stewart, 60 Wis. 587; 19 N. W. 429; 50 Am. Rep. 388 ---- 19

State vs. Glover, 112 N. C. 896; 17 S. E. 525 ---- 19

State vs. Hall, 115 N. C. 811; 20 S. E. 729; 28 L. R. A. 289; 44 Am. St. Rep. 501 ---- 22

CASES CITED IN DISSENTING OPINION.

Hyatt vs. Corhran, 188 U. S. 691; 23 Sup. Ct. 456; 47 L. Ed. 657 ---- 24, 25

Hackney vs. Welch, 107 Ind. 253; 8 N. E. 141; 57 Am. Rep. 101 ---------- 24

Kentucky vs. Denison, 24 How. 66 at p. 104; 16 L. Ed. 717-728 ---------- 24

Morgan, ex parte (D. C.), 20 Fed. Rep. 298---------- 26

Roberts vs. Reilly, 116 U. S. 80; 6 Sup. Ct. 291; 29 L. Ed. 544 ----------24, 26

Revised St. of U. S., Sec. 5278 ---------- 24

Suydam vs. Sennott, 20 Albany L. J. 230--------24, 25

Spear, on Extradition, pages 558-571---------- 25

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1915.

No. 532.

IDA MAY INNES, Plaintiff in error, VS. JOHN W. TOBIN, Sheriff of Bexar Co., Texas.	In Error to the Court of Criminal Appeals of the State of Texas.

ABSTRACT OF CASE.

Facts upon which the decision of the District Court of the 37th Judicial District of the State of Texas based its judgment refusing to grant the writ of error and upon which the Court of Criminal Appeals of the State of Texas affirmed the refusal of the lower court to grant said writ, and chronological statement of case.

Innes was indicted in the District Court of Bexar County, Texas, on the 10th day of October 1914, charged with the offenses of murder and conspiracy to murder Eloise Nelms Dennis, and Beatrice Nelms, after having been brought from the State of Oregon by requisition of the Governor of the State of Texas upon the Governor of Oregon, the requisition being based upon certain complaints which were filed before a justice of the peace in and for

Bexar County, Texas, charging plaintiff in error with the crimes of murder of Eloise Nelms Dennis and Beatrice Nelms. (Transcript of Record, pages 13 and 14, paragraph VIII.)

On the 31st day of October, 1914, subsequent to the extradition of Innes from Oregon and the indictment of said Innes by the Bexar County, Texas, court, the Governor of Georgia made requisition upon the Governor of Texas for said Innes, said requisition being made because of the fact that said Innes was charged by indictment in Fulton County, State of Georgia, with the offense of Larceny after Trust. (Transcript of Record, page 4, Executive order of the Governor of Georgia.) The Governor of Texas granted the requisition on the 4th day of November, 1914. (Transcript of Record, page 12, Executive order of the Governor of Texas.)

Said Innes was, on the 16th day of November, 1914 (subsequent to her indictment in Georgia) acquitted of the charges of murder—two cases—and the two conspiracy cases were dismissed. (Transcript of Record, page 14.)

It does not appear from either the pleadings or the evidence adduced, so far as the transcript of the record in this case shows, when Innes was indicted in Fulton County, State of Georgia, for the offense of Larceny after Trust, nor by whom nor when the money was entrusted, nor the amount thereof.

Neither does Innes, the plaintiff in error, deny in the pleadings (Transcript of Record, pages 1 and 2), nor is there any evidence (Transcript of Record, page 10, in "Statement of Facts") showing that said Innes was not

at some time prior to the 18th day of August, 1914, within the State of Georgia and in Fulton County, said State.

However, it was stated by the Governor of Georgia (Transcript of Record, page 4) in his Executive Warrant to the extradition agent, that said Innes "stands charged by indictment in Fulton County, State of Georgia, with the offense of Larceny after Trust," and it appears further in this warrant that the Governor of Georgia "made application to His Excellency, the Governor of the State of Texas, for the delivery of said Ida May Innes as a fugitive from justice," etc.

Furthermore, the Governor of the State of Texas, in honoring the requisition of the Governor of Georgia (Transcript of Record, pages 3 and 12) in his warrant, shows that he had made an adjudication that said Innes was a fugitive from Georgia. This adjudication is set out in the following language: (Transcript of Record, pages 3 and 12) * * * that the said defendant has taken refuge in the State of Texas, and whereas the said Governor, in pursuance of the Constitution and laws of the United States, has demanded of me that I cause said fugitive to be arrested and delivered," etc.

And furthermore, His Excellency, the Governor of Texas, in his warrant to the sheriffs, constables and other officers of the State of Texas, uses this language (Transcript of Record, pages 4 and 12) "Now, therefore, I, O. B. Colquitt, Governor of Texas, by virtue of the authority vested in me by the Constitution and laws of this State and the United States, do issue this my warrant commanding all sheriffs, etc. * * * to arrest and aid and assist in arresting *said fugitive*, and to deliver her when

arrested to the said agent, in order that she may be *taken back* to the said State to be dealt with for said crime."

The decision of the District Court of Bexar County, refusing to discharge said Innes on the writ of habeas corpus filed in that court on the 16th day of November, 1914, was made on the 18th of November, 1914, (Transcript of Record, page 7).

The judgment of that court was on appeal affirmed by the Court of Criminal Appeals of Texas, on January 13, 1915. (Transcript of Record, page 28.) The writ of error now pending in this court was allowed by Mr. Associate Justice Lamar on May 5, 1915. (Transcript of Record, page 39.)

BRIEF OF ARGUMENT.

This case presents for decision the question as to whether or not the language of the Constitution of the United States, Section 2, Article 4, and Section 5278 of the Revised Statutes of the United States are in entire harmony and supplement each other, or whether the statute referred to narrows and limits by its terms the constitutional provision.

That the Constitution and the statute above referred to are in harmony and are to be construed together is decided by a majority of the judges of the Texas Court of Criminal Appeals in this case when before that court. The decision of that court is to be found in the Transcript of Record, at page 25, and also in Volume 173, Southwestern Reporter, at page 291.

The construction placed upon the law in the prevailing

opinion of the Texas Court of Criminal Appeals is, we submit, consistent with the obvious purpose and intent of the Constitution and statute, whereas, the literal view taken in the dissenting opinion would destroy for most practical purposes the efficacy of the entire constitutional provision. The object of the Constitution is to enable a State whose laws have been violated to secure the arrest of the person charged with such violation even though such person is beyond the reach of the ordinary process of the State, and the statute is to make effective and not to curtail that provision. To render the provisions for extradition of criminals entirely effective the contention of the defendant in error in this case must be upheld, because if such is not the law the States will become perpetual asylums for the protection of those who violate the criminal laws of sister States.

It is stated in the majority opinion that "it is unquestioned that relator was in the State of Georgia at the date of the alleged offense and subsequently left that State."

This is a necessary inference and presumption, arising not only from the recitals in the warrant of arrest in favor of its validity, but also from the pleadings of Innes, and from the evidence adduced at the hearing.

It thus appears from this record that Innes was in Georgia sometime prior to being extradited to Texas. It is not disputed or questioned that she was properly charged with the commission of an offense punishable by the laws of the State of Georgia, but the sole contention of said Innes is that because she was taken from the State of Oregon by virtue of the warrant of rendition

issued by the Governor of Oregon, she is not a fugitive from the justice of the State of Georgia in Texas. This contention necessarily admits that said Innes was a fugitive from Georgia in Oregon on and prior to the 18th of August, 1914, but the contention is made that the acts of the Texas officials protect the plaintiff in error, and that because she is now in Texas, and is there by virtue of the proceedings referred to, she is not a fugitive and must be discharged and permitted to return to Oregon, where, however, it is admitted she would again become a fugitive from justice.

The prevailing opinion of the Texas court comprehensively supports the position of the defendant in error, and we will therefore discuss the dissenting opinion and the authorities cited therein in support thereof.

In the dissenting opinion, and near the conclusion thereof, Justice Davidson uses this language, which we think embodies the principal reason for his dissenting, viz.: * * * "until the Supreme Court of the United States has authoritatively held the other way, I shall believe the Act of Congress means, when it speaks of fleeing from the demanding State and *'fleeing into'* the asylum State, the voluntary act of the alleged fugitive, and it does not mean that by being *'compelled'* by force of authority to come into the State would constitute *'fleeing'* into the State."

We respectfully submit that Justice Davidson overlooked the fact that this court has by two authoritative rulings on this identical proposition, in principle, foreclosed this question. One of these cases (Roberts vs. Reilly, 116 U. S. 80) is cited twice in his dissenting opinion, but to sustain in one instance the assertion that the Con-

stitution, Article 2, Section 4, is not self-executing, and again cited in support of the proposition that the courts should follow the intent with which the Act of Congress, Section 5278, Revised Statutes, was enacted.

On both of these propositions we make no issue.

As to:

Roberts vs. Reilly, 116 U. S. 80.

This case was decided in 1885, and the language employed defining a fugitive, under the statute involved here, has been quoted many times by State and Federal courts, and in later decisions of this court.

In this connection, it will be recalled that the dissenting opinion of Justice Davidson is based entirely upon the language of the Act of Congress, Section 5278, of the Revised Statutes, it being conceded in the opinion that if the constitutional provision had been self-executing, Innes, the plaintiff in error, would have been without any ground upon which to stand.

The Roberts vs. Reilly decision defines a fugitive in the following language:

"To be a fugitive from justice, in the sense of the Act of Congress (Section 5278) regulating the subject under consideration, it is not necessary that the party charged should have left the State in which the crime is alleged to have been committed, after an indictment found, or for the purpose of avoiding a prosecution anticipated or begun, but simply that having within a State committed that which by its laws constitutes a crime, when he is sought to be subjected to its criminal process to answer for his offense, he has left its jurisdiction, and *is found* within the territory of another."

Then we have also the case of

Appleyard vs. Commonwealth of Mass., 203 U. S. 222, which case, however, was not cited by the Court of Criminal Appeals of Texas, either in the majority or minority opinion, but which case also, as we understand it, forecloses the question which the dissenting justice stated had never been passed upon by this court.

In Appleyard vs. Commonwealth of Mass. (intra), Appleyard made the contention that he was not a fugitive from justice because he had *no belief*, when leaving New York, that he had violated its criminal law, and therefore contended that within the meaning of the Constitution and laws of the United States he could not be deemed a fugitive from justice.

Mr. Justice Harlan, in disposing of this contention, says:

> "So that the simple inquiry must be whether the person whose surrender is demanded is in fact a fugitive from justice, not whether he *consciously* fled from justice in order to avoid prosecution for the crime with which he is charged by the demanding State. A person charged by indictment or by affidavit before a magistrate with the commission within a State of a crime covered by its laws, and who, after the date of the commission of such crime, *leaves the State*, no matter for what purpose or with what motive or under what belief, becomes *from the time of such leaving*, and within the meaning of the Constitution and the laws of the United States, a fugitive from justice, and *if found in another State must be delivered up,*" etc. * * * "The judicial authorities of the Union should

equally take care that the provisions of the Constitution be not so *narrowly interpreted* as to enable offenders against the laws of a State to find a permanent asylum in the territory of another State."

And further, in the body of the opinion in the Appleyard case, the case referred to of

Roberts vs. Reilly, 116 U. S. 80,

is cited and extensively quoted from in support of the position taken.

The following quotation from the Reilly case as embodied in the Appleyard case, is pertinent as illustrating the meaning of the word "fugitive," and because of the similarity of the instant case to the case of Roberts vs. Reilly, in both of which there was a failure to specifically deny in the pleadings or evidence that the alleged fugitives were at the time the crime was alleged to have been committed in the demanding State. The excerpt from the Reilly case quoted in the Appleyard case at page 229 is as follows:

"The appellant, in his affidavit, does not deny that he was in the State of New York about the date of the day laid in the indictment, when the offense is alleged to have been committed, and states, by way of inference only, that he was not in that State on that very day;" (Innes does not even by inference here suggest that he was not in the demanding State, but as heretofore shown, all the facts disclosed demand the conclusion that he was in Georgia) "and the fact that he has not been within the State since the finding of the indictment is irrelevant and immaterial. To be a fugitive

from justice in the sense of the Act of Congress regulating the subject under consideration, it is not necessary that the party charged should have left the State in which the crime is alleged to have been committed, after an indictment found or for the purpose of avoiding a prosecution anticipated or begun, but *simply that having within a State committed that which, by its laws, constitutes a crime, when he is sought to be subjected to its criminal process to answer for his offense, he has left its jurisdiction and is found within the territory of another.*"

It is to be noted that the opinion of the court in the Appleyard case also shows that it was arriving at a definition of the terms "fugitive from justice" within the meaning of the provisions of both the United States Constitution, Article 4, Section 2, and the United States Revised Statutes, Section 5278. And this case lays down the doctrine that there is to be no narrow and circumscribed interpretation of the law and that the terms "fugitive from justice" were intended to embrace any case where a party, after committing a crime, flees not only in the literal sense of that term, but in the mere sense of leaving the jurisdiction and being found elsewhere.

The decision in the Appleyard case quotes to the same effect Hibler vs. State, 43 Tex. 197, as follows:

> "The words fugitive from justice, as used in this connection, must not be understood in the literal sense, but in reference to the *subject matter*, considering the general object of the *Constitution* and laws of the United States in relation thereto," etc.

The case of

Ex Parte Brown, 28 Fed. Rep., page 653,

is cited in the prevailing opinion of the Texas court (Transcript of Record, page 22).

This decision was rendered in 1886. The only possible difference between the instant case and the Brown case, if we understand the propositions involved, is this:

In the Brown case, Brown was induced by fraud to come into the State from which he was extradited, and Innes was carried by legal process under the extradition laws into the State of which he is now being demanded, and which State is endeavoring to render him up to the demanding State.

The case of Roberts vs. Reilly, 116 U. S. 80,

is cited in support of the conclusion at which the court arrived, the court quoting verbatim from the decision, the definition of a fugitive, as laid down in that case by this court and as already quoted above.

In the body of this opinion, on page 655, the court says, referring to the contention of Brown that fraud had been used to decoy him into the State which rendered him up that "the contention that a party charged with crime is entitled to be released on habeas corpus because, by a stratagem—which though morally reprehensible, is not criminal, in a legal sense—he is induced to come within territory where he may be properly arrested, is not supported by a single authority," and further on page 656, it is said, "The criminal law, administered, as it is, for the protection of the whole people, does not take cognizance of the means by which alleged offenders are apprehended, so long as no act is done which, in itself, is an infraction of the law."

In re: White, 55 Fed. Rep., page 54,

is to be found another authority in support of the position contended for by the defendant in error. White offered to prove that he came from Wyoming to New York on legitimate business. The court ruled that proof of those facts would in no respect alter the situation and said that a person is a fugitive from justice when having committed a crime within a State, he withdraws himself from the jurisdiction of its courts. And the case of Roberts vs. Reilly, in the 116 U. S. 80, is cited as the authority upon which the opinion was predicated, the court quoting from that case the language hereinbefore set out.

In re Bloch, 87 Fed. Rep. 981,

the court quotes and follows the Supreme Court of the United States in Roberts vs. Reilly, 116 U. S. 80. The point involved was as to whether Bloch was a fugitive from justice. In this Bloch case, anent the pleadings and evidence disclosed by this record, this language, to be found on page 982, is pertinent:

> "Prima facie the finding of fact by the Governor, and which is recited in the body of the writ, to-wit.: 'and it having been shown by satisfactory evidence that the said Abe Bloch fled from the justice of said State and has probably taken refuge in the State of Arkansas,' must be treated as true. Has this prima facie case been overturned by the response? I do not think it has."

The purport of the decision here rendered is that the act of fleeing is complete in the sense of the Act of Congress relating to extradition of criminals when one has left the State in which he is indicted, whatever may have

been his motive in leaving the State, and it clearly indicates that, after having left, the status of the party fleeing cannot be changed from that of a "fugitive from justice" by the intervention of other agencies exercising powers delegated to them under the extradition laws of the United States.

The above and foregoing decisions by the Supreme Court of the United States and of other federal courts show that these courts have so construed the extradition law as to prevent the States from becoming asylums for those charged with the violation of the criminal laws of other States.

Nearly all of the State courts before which similar questions have been brought have likewise construed the law and followed the interpretation given thereto by this court in Roberts vs. Reilly.

In the 35 N. W. Reporter, page 9, State Ex. Rel. Burner vs. Richter, sheriff, the Supreme Court of Minnesota in construing Section 5278 of the Revised Statutes of the United States cited and adopted the definition of a fugitive as set out by this court in Roberts vs. Reilly. In this Minnesota case Burner plead guilty to a criminal charge in Kansas. After her plea, but before any sentence had been passed upon her she left that State and went into Minnesota and there remained. According to her testimony the sheriff and the attorney of the county in Kansas where she plead guilty after she had entered her plea informed her that her presence was no longer required there, and she thereupon went to Minnesota "to answer an indictment against here there pending," "in accordance with the conditions of the recognizance which she had previously entered into in that court." She made

the contention that to constitute her a fugitive from justice she must have left Kansas for the purpose of escaping from the legal consequences of her crime and as such was not the case that she was therefore not a fugitive. The only difference in the Innes case and the Burner case is that Burner returned to Minnesota in compliance with the stipulations of her bail and Innes was taken to Texas upon a rendition warrant. That the motives or purposes of the party in leaving the State where the crime was committed are entirely immaterial the court holds and says that all that is necessary to constitute him a fugitive from justice is (1) that, being within a State he there committed a crime against its laws, and (2) when required to answer its criminal process, he has left its jurisdiction, and is found in the territory of another State." The court further says the important thing is not their purpose in leaving, but the fact that they *had left,* etc. If the purpose and intent and motive in leaving the demanding State where the crime was committed is wholly immaterial and unimportant then much more do we submit is it unimportant as to what motive, what purpose, what intent, or what force or power it is that carries a fugitive from the asylum State of his choice into another State which he seeks, when so carried into involuntarily, to convert into a perpetual asylum which would enable him absolutely to escape his punishment. If the position of Innes is the law, then the law affords her opportunities of escape either by remaining in Texas indefinitely or fleeing to some State other than Oregon, or to go from Texas into the territory of Mexico which is conveniently located to the place where Innes insists she should be set at liberty for the purpose, as she says, of

returning to Oregon, a purpose, however, which we have no guarantee might not be abandoned coincident with her discharge and release. That Innes was not within the State of Georgia to answer its criminal process renders her a fugitive from justice, regardless of her purpose in leaving, and if that be true, then upon what reason can the question as to how she arrived at the place where she was found make any difference or in any way change her status which was fixed when she left the demanding State.

The same proposition is decided by the Supreme Court of Iowa in Taylor vs. Wise, 126 N. W., page 1126. This case says that the manner of his leaving is immaterial, that how or in what manner he made the change of residence is immaterial, if he declined to return voluntarily he is a fugitive, and the Roberts-Reilly case is cited by this court.

The Court of Appeals of Indian Territory in Ex. Parte Dickson, 69 S. W. Reporter, page 943, quotes extensively the language of this court as used in the case of Roberts vs. Reilly, defining a fugitive and other decisions of this court in support of said definition.

In Ex Parte Coleman, 113, S. W. Reporter, page 17, the Court of Criminal Appeals of Texas in the third headnote thereof gives almost the same definition of a fugitive, and in almost the language used by this court in the Reilly case.

It is also decided by the Pennsylvania Court in Commonwealth vs. Hare, 36 Pa. Supr. Ct., 125, that one is a fugitive when he *is found* within another State after having left the State where the crime was committed.

In

128 N. Y. Supp. 610, People v. Benham,

is found a decision which strongly supports the contention of the defendant in error. The New York court in this case cited held in effect that the fact that one was taken by legal process from New York to Pennsylvania would nevertheless not prevent New York from extraditing said party from the State to which taken, in other words that the party so taken would nevertheless be a fugitive from justice.

This language was used by the court in referring to that question, viz.:

> "The right of the State of New York to vindicate its own judgment of conviction against Marrin for the offense against its laws would in no way be affected by such a direction as is prayed for, because if Marrin is incarcerated in a Federal prison outside of the State of New York, he will be, under the Constitution of the United States and the Act of Congress governing such cases, *technically a fugitive from justice,* and *on the expiration of his sentence under the judgment of the Federal Court he can be again* taken by the Governor of the State of New York through extradition proceedings."

Ex parte Williams, a decision by the Criminal Court of Appeals of Oklahoma, reported in 136 Pac. Rep., page 597, is based on Roberts vs. Reilly.

Ex parte Galbreath, a decision of the Supreme Court of North Dakota, reported in 139 N. W. Rep., page 1050, likewise cites and adopts the definition in the Reilly case.

Counsel for plaintiff in error cites several cases, not referred to in the opinions of the Texas judges.

One of these is the case of State of:

Tennessee vs. Jackson, 36 Fed. Rep. 258.

In this case, Jackson had never been within the territory of Tennessee, the demanding State. The Governor of Illinois, however, honored the requisition of the Tennessee executive and the extradition agent spirited Jackson into the State of Tennessee, whereupon he sued out the writ of habeas corpus and by the United States District Court for that State was discharged, because he was not a fugitive within the sense of the term as used in the Federal laws. It is undoubtedly true that Jackson was not a fugitive and was not, under the United States Constitution and statute, and the judicial interpretations thereof, subject to be extradited. There is no such thing as a *constructive presence* recognized by the U. S. laws. However, as he was in the State of Tennessee, we submit that his discharge on the writ under these facts was error, and that the United States Supreme Court has directly held to the contrary on an analogous state of facts, said ruling being made by the United States Supreme Court in the case of

Mahon vs. Justice, 127 U. S. 700, and see citations.

The counsel for plaintiff in error likewise cites the case of

Ex parte Thaw, 214 Fed. Rep. 423.

This case was not cited in the Texas opinions. However, this identical case was brought to this court, and the judgment of the New Hampshire court overruled, and

Thaw was rendered up to the New York authorities. The decision of this court in the Thaw case is reported in

Drew, Sheriff, vs. Thaw, 235 U. S. 432.

Another case cited by counsel for plaintiff in error and not referred to in the opinions, is that of

State vs. Hall, 115 N. C., page 811; 28 L. R. A. 289.

This case involves a question of constructive presence only. The court in this case says:

> "It is manifest that the prisoners cannot be lawfully detained under the unmistakable language of the law, unless it has been made to appear that they are liable to extradition under the Act of Congress passed in pursuance of Article 4, Section 2, Clause 2 of the Constitution of the United States," etc. And further on in the opinion it says: "As our statute confers no power to detain in custody or to surrender at the demand of the executive of another State any person who does not fall within the definition of a 'fugitive from justice,' according to the interpretation given by the courts of the United States to the clause of the Federal Constitution providing for interstate extradition and the Act of Congress passed in pursuance of it, the only question before us is whether a person can, in contemplation of law, 'flee from justice in the State of Tennessee when he has never been actually, but only constructively, within its territorial limits.' "

Counsel for plaintiff in error cited also five other cases which, with the foregoing, constitute all the cases cited by him in his brief which were not cited and dis-

cussed by either one or the other of the two opinions rendered by the justices of the Texas Court of Criminal Appeals. We will briefly discuss each of these.

In citing these cases counsel for plaintiff in error does not contend that they are directly in point but says that they announce principles analagous to the question at issue, with which contention we are at issue in view of the decisions of this court on the questions involved and to which said decisions we will make reference.

State vs. Hall, 40 Kansas 338, holds that an alleged fugitive from justice extradited from one State to another can be prosecuted only for the offense for which he was extradited. This is not the law, the contrary having been decided in Lascelles vs. Georgia, 148 U. S. 537.

The above observation disposes also of Cannon, 47 Michigan 481 and Ex. Parte McKnight, 48 Ohio State 588.

The case of State vs. Simmons, 39 Kansas 262, is not the law as interpreted by this court in Mahon vs. Justice, 127 U. S. 700.

In re Todd, 12 S. D. 386, is likewise cited, the facts being that the man was extradited for an offense involving fraud. The court held that because he departed from the demanding State with the knowledge, and at the request of the parties alleged to have been defrauded, he was not a fugitive from justice.

This is not in conformity with the rulings and principles announced by this court in the cases hereinbefore referred to and is directly contrary to the decision of the Circuit Court of Appeals rendered in 1893 in the case of In re White, 55 Federal Reporter 54, in which case it appears that White claimed that he was on legitimate

business at the suggestion of his wife from whom it was alleged he stole the stocks and bonds involved in the criminal prosecution.

A party cannot be released by the writ of habeas corpus in a State to which he may have been carried involuntarily, though the means employed to carry him amount to fraud, force, violence, stratagem, or deceit, but he can be, notwithstanding such methods, put upon his trial to answer for any infraction of the criminal laws of such State.

The above being true, it is submitted that, on principle, then, one should not be discharged in some other State where he may be found and to which he may by any of the means above referred to have been involuntarily taken if his extradition is demanded by another State which shows a breach of its criminal laws.

That no irregularity in the extradition of a fugitive criminal, when brought within the jurisdiction of the court having cognizance of his crime, can be available to him as a means of escaping trial and punishment is decided by this court in Mahon vs. Justice, 127 U. S. 700, and the many cases referred to in the opinion of Mr. Justice Field.

It is assumed, in view of this decision, that Innes in Georgia could not be discharged by the writ of habeas corpus, although she might show violence, fraud, stratagem, etc., and we assume that she could not be released by a writ of habeas corpus brought in either the State or the Federal courts in Georgia, showing the same facts set out in this petition and the additional fact that she was by fraud, deceit or stratagem, spirited from the State of Texas into the jurisdiction of the State of Georgia, and if that be true, for what reason will the court permit her to be discharged in another jurisdiction, into

which she was taken by a legal process, although the same was done involuntarily?

The Constitution of the United States and the Act of Congress apply only to fugitives from justice, but a State may nevertheless, in the exercise of its reserved sovereign power, provide for the surrender of persons indicted for crime in another State, but who have never fled from it.

The above proposition has been held to be the law in the case of

State vs. Hall, 115 N. C. 811; 20 S. E. 729.

In the case of

Roberts, 24 Fed. Rep. 132,

it is held that the Federal and State courts have concurrent jurisdiction in cases of extradition, and that the jurisdiction of one does not preclude the other. The United States Constitution and the Acts of Congress with reference to extradition are, as has been stated by this court, in the nature of treaties between the States. They are a part of the law of each State, but the States may pass laws in aid of the Federal statute, provided they are not inconsistent therewith. Such Acts have been held not to be unconstitutional, because Congress had already acted in the matter. The right of the State to enact such legislation has been recognized by the Federal courts, and repeatedly declared by State courts.

In re Roberts, 24 Fed. 132, above cited.
Kurtz vs. State, 22 Fla. 36; 1 Am. St. Rep. 173.
Commonwealth vs. Hall, 9 Gray (Mass.) 262; 69 Am. Dec. 285.
34 Ohio St. 518. Ex parte Ammens.

The Constitution of the United States and the Acts of Congress do not cover all cases, as for instance, where one is only constructively in the State, he may be guilty of a crime and punishable therefor, but he cannot be extradited under the naked constitutional and statutory provision of the United States, as herein referred to, on the theory that never having been personally within the State's borders, he could not have fled from the State, and hence is not a fugitive from justice within the meaning of the Constitution and the Acts thereunder. But the States may pass laws in aid of such cases.

In addition to the cases above cited, see

Hartman vs. Aveline, 63 Ind. 344; 30 Am. Rep. 217.

And so, notwithstanding it may be held by this court that under the law of the United States Innes cannot be extradited to Georgia, yet it is submitted that inasmuch as the State of Texas, in Article 1088 of the Code of Criminal Procedure, has dealt with the subject and fully covered the case here presented, if for any reason it should be held not to come under the Federal laws referred to, the judgment of the Texas court from which this appeal is taken was right, and Innes should be extradited. The provision of the law of Texas referred to is as follows:

> "A person charged in another State or Territory of the United States with treason, felony or other crime, who shall flee from justice and *be found in this State* shall on demand of the executive authority of the State or Territory from which he fled be delivered up to be removed to the State or Territory having jurisdiction of the crime."

So far as Georgia is concerned, Innes is found in the State of Texas. It is undisputed that he fled from Georgia and under the law of the State of Texas, which is recognized by all the courts, the State had a right to enact in aid of carrying out the extradition rights permitted to all States by the Constitution of the United States, this law.

We have intentionally omitted any effort to cover the propositions so comprehensively dealt with in the majority opinion of the Texas Court of Criminal Appeals, and have not referred to all of the cases cited in support of their conclusion, but we have tabulated for the consideration and the convenience of this court a table of the cases referred to in the two opinions rendered by that court and both of which are printed in the transcript of the record. The cases referred to in the majority opinion are listed beginning on page 4 of this brief, and those cited by the dissenting opinion beginning at page 5.

There is one case referred to and commented upon in the prevailing opinion of this court, however, to which we desire to call the court's particular attention, viz., the case of

People ex rel. Sennot v. Suydam, 20 Alb. L. J. 230.

This Illinois case, decided in 1879, is the first authoritative ruling, so far as we have been able to find, on the question involved in this case. The Daniels case, relied on by Mr. Spear to sustain his text, as is stated in the Texas opinion in the Innes case, "was not rendered by a court of final resort but only by a court of quarter sessions, and is entitled only to such weight as its reasoning may justify."

FLIGHT and FINDING are the only essential elements upon which to base an extradition, and both of these elements obtain in the instant case.

One must actually have been in the demanding State. No mere constructive presence therein will authorize extradition, but if one leaves a State in which he has physically been, and is actually found physically in another State, no doctrine of *constructive absence* will avail to defeat his extradition therefrom any more than a *constructive presence* would warrant his extradition into the demanding State. Flight, in the sense of leaving, is all that is essential, and the term "to which such person has fled," is to be construed in the sense of being actually found therein.

Hence it is respectfully submitted that the judgments of the Texas courts remanding the plaintiff in error to the custody of the Georgia agent were correct, both under the Federal Constitution and statute and also under the Texas statute.

HUGH M. DORSEY,

Attorney for Defendant in Error, John W. Tobin, Sheriff Bexar County, Texas.

C. C. McDONALD,

Assistant Attorney General of the State of Texas.

OF COUNSEL FOR DEFENDANT IN ERROR.

Office Supreme Court, U. S.
FILED
NOV 1 1915
JAMES D. MAHER
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1915.

No. 532

IDA MAY INNES, PLAINTIFF IN ERROR

vs.

JOHN W. TOBIN, SHERIFF OF BEXAR COUNTY, TEXAS.

In Error to the Court of Criminal Appeals of the State of Texas

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MOTION TO ADVANCE

C. C. McDONALD,
Assistant Attorney General of Texas,

and

HUGH M. DORSEY,
Counsel for Petitioner.

IN THE

SUPREME COURT OF THE UNITED STATES.

October Term, 1915.

No 532.

IDA MAY INNES, *Plaintiff in Error,*

vs.

JOHN W. TOBIN, *Sheriff of Bexar County, Texas.*

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

John W. Tobin, Sheriff of Bexar County, Texas, hereinafter referred to as petitioner, comes now and respectfully shows:

On the 5th day of May, 1915, a writ of error was allowed by this court in the above entitled cause to the Court of Criminal Appeals of the State of Texas, which said court affirmed the judgment of the District Court of Bexar County, State of Texas, on a writ of *habeas corpus* sued out in said district court by the said Innes and directed to the said Tobin, her custodian, under and by virtue of an order of the Governor of the State of Texas,

honoring a writ of extradition issued by the Governor of Georgia.

Said Innes is, pending the hearing of the case above stated in this court, incarcerated in the jail of Bexar County, Texas, in the custody of petitioner herein, refusing to return to Georgia for trial on criminal charges there pending.

Petitioner and the Texas authorities have no interest whatsoever in retaining the custody of the said Innes, who is being held at an expense to the Texas authorities, and it is respectfully submitted that the authorities of the State of Georgia should, if entitled to extradite said Innes from the State of Texas, have her delivered into their custody in order that the criminal laws of that State— which, it is charged in indictments duly rendered by the grand jury of the Superior Court of Fulton County, Georgia, have been violated—may be enforced; and, on the other hand, that the said Innes, now incarcerated, should be speedily tried and liberated in the event she is innocent of the infraction of the criminal laws of the State of Georgia.

This cause was duly filed by the clerk of this court on June 26, 1915. The decision of the Court of Criminal Appeals of Texas was rendered January 13, 1915, and a rehearing denied February 10, 1915, the *habeas corpus* having been sued out and filed in the District Court of Bexar County on the 16th day of November, 1914, and decided adversely to the contention of plaintiff in error on November 18, 1914, she having been incarcerated in the Bexar County jail continuously since said last named date, and for quite a while previous thereto.

Plaintiff in error and Mr. R. H. Ward, her counsel, have each been served with a copy of this motion to ad-

vance, and have been notified that the same would be presented to this court on Monday, November 1st.

Wherefore, petitioner prays that this cause be advanced and set for argument on such day as this honorable court may deem proper.

C. C. McDONALD,
Assistant Attorney-General of Texas,
and
HUGH M. DORSEY,
Counsel for Petitioner.

Office Supreme Court, U. S.
FILED
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1915.

No. 533

VICTOR E. INNES, PLAINTIFF IN ERROR

vs.

JOHN W. TOBIN, SHERIFF OF BEXAR COUNTY, TEXAS.

In Error to the Court of Criminal Appeals of the State of Texas

---

MOTION TO ADVANCE

C. C. McDONALD,
Assistant Attorney General of Texas,

and

HUGH M. DORSEY,
Counsel for Petitioner.

IN THE

SUPREME COURT OF THE UNITED STATES.

October Term, 1915.

No. 533.

VICTOR E. INNES, *Plaintiff in Error,*

vs.

JOHN W. TOBIN, *Sheriff of Bexar County, Texas.*

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

John W. Tobin, Sheriff of Bexar County, Texas, hereinafter referred to as petitioner, comes now and respectfully shows:

On the 5th day of May, 1915, a writ of error was allowed by this court in the above entitled cause to the Court of Criminal Appeals of the State of Texas, which said court affirmed the judgment of the District Court of Bexar County, State of Texas, on a writ of *habeas corpus* sued out in said district court by the said Innes and directed to the said Tobin, his custodian, under and by virtue of an order of the Governor of the State of Texas,

honoring a writ of extradition issued by the Governor of Georgia.

Said Innes is, pending the hearing of the case above stated in this court, incarcerated in the jail of Bexar County, Texas, in the custody of petitioner herein, refusing to return to Georgia for trial on criminal charges there pending.

Petitioner and the Texas authorities have no interest whatsoever in retaining the custody of the said Innes, who is being held at an expense to the Texas authorities. And it is respectfully submitted that the authorities of the State of Georgia, should, if entitled to extradite said Innes from the State of Texas, have him delivered into their custody in order that the criminal laws of that State—which, it is charged in indictments duly rendered by the grand jury of the Superior Court of Fulton County, Georgia, have been violated—may be enforced; and, on the other hand, that the said Innes, now incarcerated, should be speedily tried and liberated in the event he is innocent of the infraction of the criminal laws of the State of Georgia.

This cause was duly filed by the clerk of this court on June 26, 1915. The decision of the Court of Criminal Appeals of Texas was rendered January 13, 1915, and a rehearing denied February 10, 1915, the *habeas corpus* having been sued out and filed in the District Court of Bexar County on the 16th day of November, 1914, and decided adversely to the contention of plaintiff in error on November 18, 1914, he having been incarcerated in the Bexar County jail continuously since said last named date, and for quite a while previous thereto.

Plaintiff in error, and Mr. R. H. Ward, his counsel, have each been served with a copy of this motion to ad-

vance, and have been notified that the same would be presented to this court on Monday, November 1st.

Wherefore, petitioner prays that this cause be advanced and set for argument on such day as this honorable court may deem proper.

C. C. McDONALD,
Assistant Attorney-General of Texas,
and
HUGH M. DORSEY,
Counsel for Petitioner.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No.

IDA MAY INNES

vs.

JOHN W. TOBIN, SHERIFF.

APPLICATION FOR BAIL.

R. H. WARD,
Attorney for Petitioner.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No.

IDA MAY INNES

vs.

JOHN W. TOBIN, SHERIFF.

APPLICATION FOR BAIL.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner respectfully represents:

1. That on the 5th day of May, 1915, he applied to the Associate Justice of this court, assigned to the fifth circuit, for a writ of error to the Court of Criminal Appeals for the State of Texas, in the above-entitled case, and the said writ of error was duly ordered to issue.

2. That the State of Georgia, upon whose demand in extradition proceedings your petitioner was illegally restrained

of his liberty, protested against the release of your petitioner upon a bond fixed according to the suggestion of the Assistant Attorney General of the State of Texas, and your petitioner respectfully prays that you will consider the objection of the State of Georgia, together with the facts as they appear in the papers filed in this case, and fix the bond at such an amount as may be deemed just and proper.

R. H. WARD,
Attorney for Petitioner.

47

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 533

VICTOR L. INNES

vs.

JOHN W. TOBIN, Sheriff.

APPLICATION FOR BAIL.

R. H. WARD,
Attorney for Petitioner.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1914.

No.

VICTOR L. INNES

vs.

JOHN W. TOBIN, SHERIFF.

APPLICATION FOR BAIL.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner respectfully represents:

1. That on the 5th day of May, 1915, he applied to the Associate Justice of this court, assigned to the fifth circuit, for a writ of error to the Court of Criminal Appeals for the State of Texas in the above-entitled case, and the said writ of error was duly ordered to issue.

2. That the State of Georgia, upon whose demand in extradition proceedings your petitioner was illegally restrained of

his liberty, protested against the release of your petitioner upon a bond fixed according to the suggestion of the Assistant Attorney General of the State of Texas, and your petitioner respectfully prays that you will consider the objection of the State of Georgia, together with the facts as they appear in the papers filed in this case, and fix the bond at such an amount as may be deemed just and proper.

R. H. WARD,
Attorney for Petitioner.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1915.

IDA MAY INNES
vs.
JOHN W. TOBIN, Sheriff

No. 532
Application for Bail

VICTOR E. INNES
vs.
JOHN W. TOBIN, Sheriff

No. 533
Application for Bail

Appeals from Court of Criminal Appeals of Texas.

Brief of

[illegible]
Attorney for Appellants.

SUB-HEADINGS.

1. Bail should not be allowed a fugitive in extradition cases in the asylum State, is the general rule.

2. Bail, if allowed at all in extradition cases, is only permitted in exceptional and extraordinary cases.

3. There is no statutory authority giving the Supreme Court of the United States authority to bail in extradition cases, and unless this court gets the right solely from the grant of jurisdiction over the proceedings by virtue of the writ of error, no such authority obtains.

4. Bail in this case, if governed by the law of the asylum State, cannot be granted.

5. The only proper place to obtain bail is in the demanding State where the crime was committed, after the fugitives are returned to that jurisdiction.

6. Whatever court grants bail considers not only the crime and the nature thereof, but all the attendant facts and circumstances appertaining to and connected therewith and the financial ability of the defendant.

7. The crime for which the Inneses are indicted, its nature and the facts and circumstances attending the commission of the same.

IDA MAY INNES vs. JOHN W. TOBIN, SHERIFF.	WRITS OF ERROR FROM THE COURT OF CRIMINAL APPEALS OF TEXAS.
VICTOR E. INNES vs. JOHN W. TOBIN, SHERIFF.	APPLICATIONS FOR BAIL.

ABSTRACT OF CASE.

The Inneses were indicted in the Superior Court of Fulton County, Georgia, on the 30th of October, 1914, on three separate bills, charging them with larceny after trust delegated, in sums aggregating approximately $4,000.00. Request for extradition was made by the Governor of Georgia upon the Governor of Texas, the Inneses having previously been extradited by Texas from Oregon, whereupon writs of *habeas corpus* were sued out, preventing their extradition from Texas and return to Georgia.

After a hearing, the Inneses were remanded, whereupon appeals were taken to the Court of Criminal Appeals of Texas. This court sustained the lower court and remanded the Inneses.

The decisions of the Court of Criminal Appeals of Texas, rendered January 13, 1915, are to be found in Pamphlet No. 1, Vol. 173 of the Southwestern Rep., pp. 291 and 297. After applying for a re-hearing, which was denied by the Court of Criminal Appeals of Texas, February 10, 1915, a writ of error to the Supreme Court of the United States was allowed by the Honorable Associate Justice of the United States Supreme Court assigned to the Fifth Circuit, embracing the State of Texas.

The Inneses, through a recent incumbent of the of-

fice of Assistant Attorney-General of the State of Texas, who was not familiar with the circumstances of the case, suggested bonds of $500.00 for Mrs. Innes and $750.00 for Victor E. Innes. After information that this suggestion had been made to the Associate Justice of this court, assigned to the circuit in question, by the Assistant Attorney-General, as aforesaid, the State of Georgia, through its prosecuting attorney, the Solicitor-General of the Atlanta Judicial Circuit, Hugh M. Dorsey, protested against the release of said petitioners, this protest being made both to the Honorable Associate Justice aforesaid and to the Texas authorities.

The facts essential to the consideration of the legal questions brought up by the applications for bail are disclosed by the papers of file in this court and by the decisions of the Court of Criminal Appeals of Texas, to which reference and citation have been given, but the facts and circumstances of the crime alleged to have been committed in Georgia will be hereinafter set out fully and in detail, to the end that in the event it should be held by this court that these are, under the circumstances obtaining, bailable cases, adequate bonds may be assessed.

BRIEF OF ARGUMENT.

1

BAIL SHOULD NOT BE ALLOWED A FUGITIVE IN EXTRADITION CASES IN THE ASYLUM STATE, IS THE GENERAL RULE.

In the brief time which we have for the investigation of the matters involved in this application for bail, and the preparation of brief thereon, we cannot go very fully into the matter, and must content ourselves with the suggestion of such authorities as we have been able to find.

We do not find any United States statute controlling,

as we understand it, the matter of bail in extradition cases. In the absence of some statute controlling, the question is, whether or not the United States Supreme Court has authority to grant bail. Congress has legislated on the matter of bail in almost every conceivable case (Hudson vs. Parker, 156 U. S. 277-295 (39 L. Ed. 424), dissenting opinion of Mr. Justice Brewer, p. 290), and this court has formulated certain rules applicable to various cases.

Rules 34-36.

But neither the statutes nor the rules cover extradition cases.

Wright vs. Henkel, 190 U. S. 40-64 (47 L. Ed. 948).

In this case, Mr. Chief Justice Fuller says:

> "By Sec. 1015 of the Revised Statutes it is provided, etc., . . . but this must be read with Sec. 1014, the preceding section, and that is confined to crimes or offenses against the United States," citing Rice vs. Ames, 180 U. S. 377 (45 L. Ed. 582) . . . "These sections were originally contained in one section. Judiciary Act of 1789; 1st Stat. at L. 91, Chapter 20, Sec. 33."

Mr. Justice Brewer, in the dissenting opinion in Hudson vs. Parker, just above cited, was of the opinion that this court would have the right to admit to bail presumably in any case, by virtue of the grant of jurisdiction over the proceedings in error. The majority opinion in that case, however, seems to hold that the matter of the right of allowing bail arises out of statute.

In line with the contention that the power to bail is

instant to the power to hear and determine, and necessarily belongs to the court having the power to try; see

Am. & Eng. Enc. of Law, Vol. 3, p. 654.

With reference, however, at least to extradition matters, we find several courts intimating, and others directly holding that no such inherent power exists, but that bail is a statutory matter.

To this effect is the case

In re: Carrier, 57 Fed. 578.

This was a case from Colorado, and the district judge said:

> "The matter of admitting to bail is not a question of practice. Since the time of Edward the First it has been regulated by statute, and in our day bail is not allowed in any case except in pursuance of some statute."

This was a case of international extradition, however. The Supreme Court of the United States in

Wright vs. Henkel, 190 U. S. 40-64 (47 L. Ed. 948),

refers to this case, and by virtue of the reasoning of Mr. Chief Justice Fuller, by whom the opinion was delivered, at p. 62, seems to approve. This Henkel case, however, was an international extradition case.

The case of

United States vs. Hudson, 65 Fed. Rep. 68,

does not relate to extradition matters at all, but the same holds that bail is a statutory matter.

In re: Wright, 123 Fed. Rep. 463 (2),

it is held in an international extradition case that the

Circuit Court of the United States is without power to admit to bail. On p. 464, par. 4, the court says:

> "4. The opinion of Lord Russell, in Queen v. Spilsbury, 2 Q. B. D. (1898) 615, upon which petitioner principally relies, and which holds that 'the Court of Queen's Bench has, independently of statute, by the common law, jurisdiction to admit to bail' is not persuasive. The opinion concludes with the statement: 'This inherent power to admit to bail is historical, and has long been exercised by this court, and, if the Legislature had meant to curtail or circumscribe this well-known power, their intention would have been carried out by express enactment.' The Circuit Courts of the United States, however, have no such historical heritage. 'These courts are creatures of statute, and they have only so much of the judicial power of the United States as the Acts of Congress have conferred upon them.' Bath County v. Amy, 13 Wall 244, 20 L. Ed. 539."

This is the case which afterwards was considered by the Supreme Court of the United States, Wright vs. Henkel, 190 U. S. 40-64.

In

Ex Parte Thaw, 214 Fed. Rep. 444,

the court says:

> ". . . An examination of authorities has raised a query in my mind whether the various statutes and constitutions creating the absolute right of bail in misdemeanor cases, which ordinarily operate as an imperative mandate upon courts, are to be accepted in cases arising in habeas corpus proceedings in respect to interstate extraditions. The English case of Queen v. Spilsbury, L. R. (1898); 2 Q. B. D. 615, and Wright v. Henkel, 190 U. S. 40, 23 Sup. Ct. 781, 47 L. Ed. 948, Moore on Extra-

dition, Vol. 2, pp. 973, 974, Piggott on Extradition, p. 94, Ex parte Erwin, 7 Tex. App. 288, and Ex parte Gaynor and Greene, 9 Can. Cr. Cas. 255, are among the authorities which discuss the question of the right of bail in *habeas corpus* proceedings interposed upon extradition process."

The case of the Inneses, with which we are now dealing, is a felony case and not a misdemeanor.

Criminal Code of 1911 of the State of Georgia, Sections 2 and 192.

In

Ex parte L. Erwin, 7 Tex. App. 288,

the headnote sets out the conclusion of the court as follows:

> "Same in Extradition Cases.—*Quaere,* whether a party detained by authority of an extradition warrant, and who has sued out *habeas corpus* before a district judge and been remanded to custody, has a right of appeal to this court. *If so, however, he is not entitled to go at large, on bail or otherwise, pending his appeal. The right of bail guaranteed by the Bill of Rights does not obtain in extradition cases originating under that clause of the United States Constitution which requires the rendition of fugitives from justice."*

In the body of the opinion (p. 295) the court says:

> "Certainly, if an appeal by a party arrested on a warrant of extradition is within the purview of the statute, the law makes no such exception in his favor as to authorize him to go at large pending the action of this court, and in a situation to defy its mandate and to treat its judgment with contempt." . . .
>
> "This provision in our organic law must be construed with and be controlled by that provis-

ion in the Constitution of the United States, which is the supreme law of the land, and which provides that 'a person charged in any State with treason, felony, or other crime, who shall flee from justice and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.' (Const. U. S., Art. 4, Sec. 2). If, upon arrest under a warrant of extradition, bail is allowable, the Federal Constitution is set at naught, and delivery in the State having jurisdiction of the offence would have its price, regulated generally by the amount of the bail bond, where one could be given at all, and a fundamental provision which was intended to apply to all classes of citizens would be restricted to the poor and unfortunate who were not able to furnish bail. Such cannot be the proper construction of the two constitutions."

And in

Hobbs vs. State, 32 Tex. Cr. 312 (22 S. W. 1035),

the Court of Criminal Appeals of Texas, in headnote 2, holds:

"A fugitive from justice under arrest for an offense against the law of the State of asylum, and for extradition under an executive warrant, is not entitled to bail pending the determination of the offense, even though such offense is bailable."

This case refers to the previous decision of ex parte Erwin, 7 Tex. App. 296.

A strong case to the same effect is

Ex parte Massee, 95 S. C. 315 (79 S. E. 97),

the second headnote of which says:

"... But where the prisoner is held for extradition, bail should not be allowed if the Federal law has been complied with, as it must be presumed the State extraditing will accord the prisoner all his legal rights,"

and this court cites for the above proposition the 190 U. S. 40, Wright vs. Henkel.

As bearing upon the propositions involved, see
Ex parte Wall, 38 Sou. 628.

This is a Mississippi case.

In re: Foye, 57 Pac. 825.

This was a decision by the Supreme Court of Washington, and headnote 2 says:

"Pending an appeal by one in custody under an extradition warrant from an order in a *habeas corpus* proceeding remanding him to custody, he is not entitled to be admitted to bail."

In the opinion the court says:

"Neither the Constitution of the United States nor the law of Congress pertaining to the subject of extradition, nor any law of this State, authorizes the giving of bail in *habeas corpus* proceedings in extradition cases. . . . As was well said in the case of Ex parte Erwin, 7 Texas App. 288, to permit one arrested as a fugitive from justice to go at large upon bail would be to put him in a situation to defy the mandate of the court and treat its judgment with contempt."

Ex parte Edwards, 91 Miss. 621 (44 Sou. 827). In this case it is stated, however, that bail in extradition cases is expressly denied by the statute.

Cyc. of Law and Procedure, Vol. 19, p. 96, XII, Bail, note 92.

It is submitted that the right of extradition would be rendered incomplete if the States were allowed to grant bail, and that the only proper authority to grant bail would be the courts of the United States, and that inasmuch as Congress has legislated with reference to bail in other cases, and has not passed any enactment with reference to bail in extradition cases, that Congress must have intended, in view of the nature of the writ of extradition, that bail should not be obtainable. As suggested in Wright vs. Henkel, 190 U. S. 40-64, the enforcement of the bond, if forfeited, would not meet the situation and the regaining of the custody of the accused obviously would be surrounded with serious embarrassment. The courts of the asylum State are not in possession of all the facts and circumstances of the crime, which should be known in fixing a bail, and the knowledge of the court of the law, both as to the matter of bail and the statute which the fugitive is alleged to have violated, must be necessarily at best incomplete. Suppose that a fugitive were indicted for perjury in Georgia, the perjury being committed in the trial of a capital case, the defendant convicted and executed. Under the Georgia law, Criminal Code of 1911, Sec. 265, a person guilty of perjury occasioning the conviction and execution of a person, would himself be liable to capital punishment. This is an exceptional case to the usual law, which provides that a party guilty of perjury shall serve a term in the penitentiary. Criminal Code of Georgia, 1911, Sec. 260.

Now, the pleadings in the indictment would not inform the officials of the asylum State that this crime in Georgia is not ordinarily bailable, but is bailable only by an express order of a judge of the Superior Court, after full investigation into the facts and circumstances

attending the commission of the alleged crime. The instant case is a splendid illustration, going to support our contention that bail should not be allowed in the asylum State, but that the fugitive should first be returned to the demanding State, where the crime was committed, where he is indicted, and where the facts and circumstances connected with the crime are fully known, it, of course, being presumed that the officials there will do what is right in the premises, and if not, the defendant would nevertheless have recourse to the courts of the demanding State or to the United States Court to obtain a fair assessment of a bond.

2.

BAIL, IF ALLOWED AT ALL IN EXTRADITION CASES, IS ONLY PERMITTED IN EXCEPTIONAL AND EXTRAORDINARY CASES, OR UNDER AN EXPRESS STATUTE.

We contend that no State has the right or authority to enlarge, under a statute, a fugitive demanded of another State, because if this right is accorded the State, then the same would derogate from and interfere with the provisions of Congress with reference to the extradition of fugitives, and our contention further is, that in the absence of a statute the State courts have not the inherent power to enlarge on bail, because to do this might defeat, and certainly would, in any event, delay and materially interfere with the rights afforded under the United States extradition law.

In connection with this, however, we will cite certain cases which, though seeming to recognize the general rule, have allowed exceptions thereto, either by reason of a statute or because of the hardship that would otherwise have been worked.

In re: Mitchell, 171 Fed. 289.
Roberts vs. Reilly, 116 U. S. 80-97 (29 L. Ed. 544).

In this case it appears that the applicant for *habeas corpus* was admitted to bail, though it nowhere appears that there was any objection made.

Farrell vs. Hawley, Sheriff, 78 Conn. 150 (61 A. 502).

In New York the matter seems to be controlled by statute.

In re: Barlow, 127 N. Y. Sup. 542.
People vs. Baker, 124 N. Y. Sup. 47.

3.

THERE IS NO STATUTORY AUTHORITY GIVING THE SUPREME COURT OF THE UNITED STATES AUTHORITY TO BAIL IN EXTRADITION CASES AND UNLESS THIS COURT GETS THE RIGHT SOLELY FROM THE GRANT OF JURISDICTION OVER THE PROCEEDINGS BY VIRTUE OF THE WRIT OF ERROR, NO SUCH AUTHORITY OBTAINS.

We have already cited authorities sustaining this sub-head, under the foregoing sub-heads.

Wright vs. Henkel, 190 U. S. 40-64 (47 L. Ed. 948),

and citations therein contained, which is the case most in point.

Rice vs. Ames, 180 U. S. 377 (45 L. Ed. 582).

Section 1017 of the Revised Statutes is to be construed with sections immediately preceding, and thus construed, in view of this decision, it seems to us obvious that extradition cases were not contemplated, and

likewise the rules of the Supreme Court of the United States, to which reference has been made already, viz., Rules 34 and 36, do not cover and apply to extradition cases.

4.

BAIL IN THIS CASE, IF GOVERNED BY THE LAWS OF THE ASYLUM STATE, CANNOT BE GRANTED.

Ex parte Erwin, 7 Tex. App. 288.

Hobbs vs. State, 32 Tex. Cr. 312 (22 S. W. 1035).

These cases are directly in line with what the law of every State should be.

If, in the present situation in the Innes cases, any officer or court ought to have the right to grant bail, it should be the United States Supreme Court, and not the courts of the State of Texas. The United States Supreme Court now has full and complete jurisdiction in these cases, and should have full and plenary power to do each and every thing permissible by the law to be done in the cases, and the right and jurisdiction, with reference to the Inneses, should not be divided in the absence of some express statute, or rule, between the Texas court, giving and assessing bonds pending appeals to be decided by the Supreme Court of the United States.

5.

THE ONLY PROPER PLACE TO OBTAIN BAIL IS IN THE DEMANDING STATE, WHERE THE CRIME WAS COMMITTED, AFTER THE FUGITIVES ARE RETURNED TO THAT JURISDICTION.

This should, for obvious reasons, we submit, be the rule. In the first place, it is necessary to make the law

of Congress, with reference to the extradition of fugitives, full and complete, and in the next place, it is a rule founded upon convenience and grows out of the very nature of the subject matter under consideration, inasmuch as it would impose a hardship, if, indeed, it could be effectively accomplished at all, upon the officials of the asylum State, to familiarize themselves with the law of the demanding State, which we submit must necessarily be taken into consideration in assessing bail, as well as the history of the crime.

The rule in Georgia in a proposition somewhat analogous, is to be found in the law of Georgia to the effect that a party indicted in one county and arrested in another, howsoever remote the county of the arrest may be, and no matter what the hardship may be, is not permitted to give bond except in the county where the crime was committed.

Weathers vs. Beavers, 139 Ga. 122.

Lamb vs. Dillard, 94 Ga. 206 (21 S. E. 463).

6.

WHATEVER COURT GRANTS BAIL CONSIDERS NOT ONLY THE CRIME AND THE NATURE THEREOF, BUT ALL THE ATTENDANT FACTS AND CIRCUMSTANCES APPERTAINING TO AND CONNECTED THEREWITH, AND THE FINANCIAL ABILITY OF THE DEFENDANT.

The crime of larceny after trust, where murder was resorted to, to cover it up, would warrant and demand a large bail, no matter what the amount wrongfully and criminally appropriated by the defendant to his own use might be. A crime committed by a person not attached by family ties to the community in which the crime was committed would warrant and demand a larger bail than the same crime committed by a man of family and social

and business connections in the community. The matter of financial responsibility is only one of the many elements entering into the assessment of bail.

Instances might be multiplied illustrating, but we will not under this head consume further time, as the matter will be more fully elaborated under the succeeding heading, dealing with the crime for which the Inneses are indicted, its nature, and the circumstances surrounding the commission of the same.

We content ourselves, in support of the above proposition, by citing only a very few authorities bearing thereon.

That it is a matter for the exercise of a broad discretion is shown by U. S. Comp. St., Sec. 1680 (Rev. St., Section 1016). That statute says that a judge fixing the bond shall exercise discretion, "having regard to the nature and circumstances of the offense, and of the evidence, and to the usages of law."

The Criminal Code of Procedure of the State of Texas, at p. 81, lays down certain rules for fixing the amount of bail, viz.:

> "(1) The bail shall be sufficiently high to give reasonable assurance that the undertaking will be complied with.
>
> "(3) The nature of the offense and the circumstances under which it is committed are to be considered.
>
> "(4) The pecuniary circumstances of the accused are to be regarded."

In re: Williams, 23 Pac. 118, the Supreme Court of California says that the amount of bail "does not depend alone on the sum of money involved, but rather on the turpitude of the crime, its dangerous nature to the public, and the punishment imposed."

To the same effect is the ruling by the Texas Criminal Court of Appeals in

Ex parte Campbell, 28 Tex. Crim. Rep. 376.

This case holds that the nature of the offense and the circumstances under which it was committed shall be considered.

7.

THE CRIME FOR WHICH INNESES ARE INDICTED, ITS NATURE AND THE FACTS AND CIRCUMSTANCES ATTENDING THE COMMISSION OF THE SAME.

The State of Georgia, in the cases of the Inneses, indicted them and will be able to show on the trial thereof the facts that will now be stated for the consideration of this court, in the event it should be determined that bail pending the hearing of these appeals will be given.

With reference to most, if not all, of the statements made under this heading, the Solicitor-General of the Atlanta Judicial Circuit, the prosecuting attorney in charge of these cases, has affidavits which can and will be submitted to the court, if desired. A synopsis of the same only is given, however, here, (1) because of the length of said affidavits and the space and time that would be consumed in fully setting them out, and (2) because of the suggestion of Mr. Associate Justice Lamar, with whom the matter of bail was discussed, that we set out here a brief synopsis of the affidavits aforesaid, and the proof which it is contended the State will be allowed to give at the trial of the cases if the fugitives should be returned to the Georgia jurisdiction:

Innes became acquainted with Mrs. Lois Nelms Dennis some time during 1911. They met in Carson City, Nevada, said Innes acting as attorney for Mrs. Dennis

at that point. Mrs. Dennis returned to Georgia in 1912, corresponding frequently with Innes. Innes had a wonderful influence over Mrs. Dennis, whose father dying in 1911 left her an interest in an estate, her part of which, at a conservative estimate, amounted to approximately fifteen or twenty thousand dollars. Inneses visited Atlanta, Ga., some time during April, 1914, passing at the time of the visit under assumed names, viz., Mr. and Mrs. Invelee.

Mrs. Innes, at the time she and Innes were in Atlanta and living under the assumed name together as man and wife—this fact, of course, being unknown to Mrs. Dennis—was passing herself off to Mrs. Dennis, and in the household of the mother of Mrs. Dennis, viz., Mrs. Nelms, as the aunt of Mr. Innes. The State will show that previous to coming to Atlanta, Innes had received by telegraph and express large sums of money, approximately $3,000.00 for the ostensible purpose, as he claimed, of investing this money for Mrs. Dennis in lands in certain Western States; and the State can further show by witnesses positively identifying both parties, that Mrs. Innes, the wife of Innes, while in Atlanta posing as the aunt and living with Innes at the time in a boarding house under an assumed name, received of Mrs. Dennis $1,100.00 in cash at one of the leading banks; that Innes spent a week after leaving Georgia under an assumed name at the Ransom Hotel in San Antonio, Tex., registering with this same woman as from Birmingham, Ala., though the said Innes and wife subsequently passed in San Antonio under their own name. That under Innes's instructions, Mrs. Dennis telegraphed and expressed parts of this money, using an assumed name, and that the money was sent, part of it to a post office box in Portland, Ore., where the same was received both by

Innes and Mrs. Innes, the post office box at Portland, Ore., being rented for the Inneses by a third person, and through whom, at different times, money orders were cashed, the same being delivered in person to the Inneses; that Innes and his wife plotted together in Georgia to induce Mrs. Dennis and her sister Miss Beatrice Nelms, a splendid business woman, who by reason of the fact that her sister was sending so much money to Innes, desired that Innes should produce and show the papers indicating what was being done with the money used, to go to Texas with them. Mrs. Dennis was engaged to Innes and believed that she would marry him, and that they would go to India, and that Mrs. Innes, his wife, was Innes's aunt, and would go with them to India, and there all were to make their permanent residence. Miss Beatrice Nelms went to San Antonio, Tex., to receive of Innes, as per his promise made to her in Georgia, the papers indicating the disposition of the money furnished him, and the State contends that it will be able to show that both girls were murdered by Mr. and Mrs. Innes in a cottage in San Antonio, Tex., rented by Innes for the purpose, the murder occurring some time in June, 1914; that Innes purchased acids to dissolve the bodies; that acid was found at the place in large quantities, immediately after the disappearance of the girls; that blood spots were found in the room where they were supposed to have met their death; that in addition to disposing of the bodies by means of certain acids, with the use of which Innes and his wife were experienced, that a large bone grinder and meat axe were used, these articles being bought under assumed names and sent at the time the murder is alleged to have been committed, to the residence occupied by the Inneses. The State can show that after the murder said Innes shipped

the bone grinder under an assumed name, labeling the same as books. That Mrs. Innes, as soon as Innes was arrested, endeavored to have a doctor in Portland certify that her physical condition was such that she should not be taken to jail, and that she enjoys the same health now that she did previous to the crime, and the date that she was committed to the San Antonio jail. That Innes is a very well educated man, having been a lawyer in the State of New York, and subsequently Assistant District Attorney of the United States in Nevada, and that he has traveled and resided abroad. While the State of Georgia cannot, on the trial of the cases against the Inneses, put the character of these parties in issue, it is submitted that it is important to be considered in assessing bonds, that these people are of bad character, and inasmuch as people of bad character, who have traveled, accused of a heinous crime, are more apt, if admitted to bail, to flee where they cannot be apprehended, than would a person of good character; hence we submit, for the court's consideration, the information that Innes had a criminal reputation in the State of New York.

We apprehend that it is not necessary or advisable to go fully and specifically into further details with reference to the crime, and the circumstances attending the commission thereof. Suffice it to say that the State of Georgia is in possession of information which shows that the Inneses obtained of Mrs. Dennis approximately $15,000.00, or practically all the estate left her by her father, and that they murdered the two sisters in San Antonio, Tex., to cover up the original crime, viz., the misappropriation of the funds with which they were entrusted.

The family of the deceased girls, in their search for the girls, and in obtaining evidence against Inneses, and in returning the Inneses from Oregon to the State of

Texas—said Inneses fleeing from Texas after the murder to Oregon—have expended in cash not less than $10,000.00. The Inneses were indicted in Texas for murder and conspiracy to murder. The prosecuting attorney at San Antonio wired and requested the Solicitor-General at Atlanta to indict, and after investigation this was done. The Inneses were not prosecuted on the murder charge in San Antonio, because the District Attorney was of the opinion that in view of a statute in that State somewhat different from that of other States, he could not establish the *corpus delicti*. The State of Georgia has a letter from the attorney for the Inneses, R. H. Ward, in which he states that it was agreed by the Inneses and himself as their attorney, that if the indictment charging them at San Antonio with a conspiracy to murder should be disposed of, that the Inneses would return immediately to Georgia, and that they would not resort to legal proceedings to prevent being carried back to Georgia, and the State is in possession of an affidavit from the Georgia extradition agent to the effect that the Inneses made this promise, and that the charge of conspiracy to murder, under the Texas statute, was disposed of in that court by virtue of this agreement and understanding, which the Inneses forthwith and immediately violated by suing out a writ of *habeas corpus* as soon as the Texas prosecutions were terminated. Under the Texas statute, the Inneses, for a conspiracy to murder, were only punishable for about the same length of time that they would be punished under the Georgia statute for the crime for which they are indicted. Under the Texas law, no provision was made for bringing to Texas in behalf of the prosecution non-resident witnesses, and the entire financial burden of bringing witnesses necessary to convict of that crime in that State

would have fallen upon the family of Mrs. Dennis, and inasmuch as they had expended all the money that they had or could raise, and inasmuch as the punishment for the Georgia crime was as severe as the punishment for the Texas crime, and especially because the State of Georgia would bear the expenses of bringing non-resident witnesses from the several States, the family of the deceased preferred that the prosecution should be carried on in Georgia, and requested the Texas authorities to give the direction to the case which was given.

In view of the fact that Innes, previous to this trouble, had been United States Assistant District Attorney, and in view of the fact that he obtained directly from Mrs. Dennis approximately $15,000.00, within eighteen months, and in view of the foregoing circumstances of the crime, it is respectfully submitted that in the event bail is granted, the same should be for each of these defendants somewhere in the neighborhood of the bail assessed by the Georgia authorities, viz., $10,000.00 each, which sum it is submitted is a fair bail.

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Asst. Atty.-General of Texas.

Hugh M. Dorsey,
Counsel for Appellee.

ALPHABETICAL LIST OF CASES CITED.

PAGE

Barlow, In re, 127 N. Y. Supp. 542 12
Bath County v. Amy, 13 Wall 244 (20 L. Ed. 539) 6
Campbell, Ex parte, 28 Tex. Cr. Rep. 376 16
Carrier, In re, 57 Fed. 578 5
Edwards, Ex parte, 91 Miss. 621 (44 Sou. 827) 9
Erwin, Ex parte, 7 Tex. App. 288 ..... 7, 8, 9, 13
Farrell v. Hawley, Sheriff, 78 Conn. 150 (61 Atl. 502). 12
Foye, In re, 57 Pac. 825 9
Gaynor & Greene, Ex parte, 9 Can. Cr. Cas. 255 7
Hobbs v. State, 32 Tex. Cr. 312 (22 S. W. 1035) 8, 13
Hudson vs. Parker, 156 U. S. 277-295 (39 L. Ed. 424). 4
Innes, In re, 173 S. W. 297 2
Innes, In re, 173 S. W. 291 2
Lamb v. Dillard, 94 Ga. 206 (21 S. E. 463) 14
Massee, Ex parte, 95 S. C. 315 (79 S. E. 97) 8
Mitchell, In re, 171 Fed. 289 12
People v. Baker, 124 N. Y. Supp. 47 12
Queen v. Spilsbury, 2 Q. B. D. (1898) 615 6
Rice v. Ames, 180 U. S. 377 (45 L. Ed. 582) 4, 12
Roberts v. Reilly, 116 U. S. 80-97 (29 L. Ed. 544) 12
Thaw, Ex parte, 214 Fed. 444 6
United States v. Hudson, 65 Fed. 68 5
Wall, Ex parte, 38 Sou. 628 9
Weathers v. Beavers, 139 Ga. 122 14
Williams, In re, 23 Pac. 118 15
Wright, In re, 123 Fed. 463 (2) 5, 6
Wright v. Henkel, 190 U. S. 40-64 (47 L. Ed. 948), 4, 5, 6, 9, 10, 12

ALPHABETICAL LIST OF CODES, STATUTES AND TEXT-BOOKS CITED.

	PAGE
American & English Enc. of Law, Vol. 3, p. 654	5
Compiled Statutes of U. S., Sec. 1680 (R. S., Sec. 1016)	15
Cyc. of Law & Procedure, Vol. 19, p. 96	9
Extradition, by Moore, Vol. 2, pp. 973, 974	6
Extradition, by Piggott, p. 94	7
Georgia Criminal Code, Secs. 2 and 92	7
Georgia Criminal Code, Secs. 260, 265	10
Judiciary Act of 1789; 1 Stat. at L. 91, Ch. 20, Sec. 33	4
Revised Statutes, Sec. 1014	4
Revised Statutes, Sec. 1015	4
Revised Statutes, Sec. 1016 (U. S. Comp. St., Sec. 1680)	15
Revised Statutes, Sec. 1017	12
Rules of The Supreme Court of U. S., 34 and 36	4, 13
Texas Code of Criminal Procedure, p. 81	15
United States Constitution, Art. 4, Sec. 2	8

INNES *v.* TOBIN, SHERIFF OF BEXAR COUNTY, TEXAS.

ERROR TO THE COURT OF CRIMINAL APPEALS OF THE STATE OF TEXAS.

No. 532. Argued January 6, 1916.—Decided February 21, 1916.

Prior to adoption of the Constitution, fugitives from justice were surrendered between the States conformably to what were deemed to be the controlling principles of comity.

It was intended by Art. IV of the Constitution to fully embrace the subject of rendition of fugitives from justice between the States and to confer authority upon Congress to deal with that subject.

The Act of February 12, 1793, c. 7, 1 Stat. 302, now Rev. Stat., § 5278, was enacted for the purpose of controlling the subject of interstate rendition and its provisions were intended to be dominant and, so far as they operated, controlling and exclusive of state power.

Construed in the light of the principles which the statute embodies, the provisions of Rev. Stat., § 5278, expressly or by necessary implication, prohibit the surrender in one State for removal as a fugitive from justice to another State of a person who clearly was not and could not have been such a fugitive from the demanding State.

The doctrine of asylum applicable under international law by which a person extradited from a foreign country cannot be tried for an offense other than the one for which the extradition was asked does not apply to interstate rendition.

Where there is nothing in the record of a *habeas corpus* proceeding to show that the person held for surrender under interstate rendition had not been in the demanding State there is no basis for this court assuming that the rendition order conflicted with Rev. Stat., § 5278, in that respect because the record did show that such person had come into the surrendering State from a State other than the one demanding.

An Act of Congress which leaves a subject with which Congress has power to deal under the Constitution unprovided for does not necessarily take the matters within the unprovided area out of any possible state action; and so held that the exclusive character of § 5,278, Rev. Stat., does not relate to the rendition between States of criminals found in, but who had not fled to, the surrendering State but had been involuntarily brought therein.

In construing an Act of Congress, this court will not presume that because its provisions were not coterminous with the power granted by Congress, it was so framed for the purpose of leaving the subject, so far as unprovided for, beyond the operation of any legal authority whatever, state or National.

THE facts, which involve the construction of the provisions in the Federal Constitution relative to intrastate rendition and the constitutionality, construction and application of § 5278, Rev. Stat., providing for such rendition, are stated in the opinion.

Mr. Joseph W. Bailey, with whom *Mr. R. H. Ward* was on the brief for plaintiff in error:

Under the admitted facts, plaintiff in error was not a fugitive from justice within the meaning of the Act of Congress, and § 2, Art. 4, Const. of U. S. is not self-executing. *Hyatt* v. *Corkran*, 188 U. S. 691; *Kentucky* v. *Denison*, 24 How. 66; *Roberts* v. *Reiley*, 116 U. S. 80.

Section 5278, Rev. Stat., is plain and unambiguous. It contemplates that in order to be a fugitive from justice, there must have been a voluntary flight, as it speaks of a demand of the executive of a state for the surrender of a person as a fugitive from justice by the executive authority of a State to which such person has fled, and it provides that the indictment or affidavit must be certified as authentic by the Governor of the State from whence the person, so charged, has fled, etc., and it makes it the duty of the executive authority of the State to which such person has fled, to cause him to be arrested and secured. See *Hyatt* v. *New York*, 188 U. S. 691.

To constitute one a fugitive, there must be a flight and it does violence to the language of the statute, to hold that a person has fled into a State, when he is brought into such State by force, involuntarily, against his will, and by the strong arm of the law. Spear on Extradition 338–571; 2 Moore on Extradition, § 569.

A person forcibly brought into a State from a sister State is entitled to his discharge upon *habeas corpus*. See also *North Carolina* v. *Hall*, 28 L. R. A. 292; *Tennessee* v. *Jackson*, 26 Fed. Rep. 258; *Ex parte Thaw*, 214 Fed. Rep. 423; 2 Moore, page 920; *In re Robinson*, 29 Nebraska, 135; *State* v. *Simmons*, 39 Kansas, 262; *State* v. *Hall*, 40 Kansas, 338; *Re Cannon*, 47 Michigan, 481; *Ex parte McKnight*, 48 Oh. St. 588; *Ex parte Todd*, 12 S. Dak. 386.

Mr. Hugh M. Dorsey, with whom *Mr. C. C. McDonald* was on the brief, for defendant in error.

MR. CHIEF JUSTICE WHITE delivered the opinion of the court.

The Governor of Oregon honored a requisition made by the Governor of Texas for the delivery of the plaintiff in error for removal to Texas as a fugitive from the justice of that State. The accused was taken to Texas, tried for murder and a conspiracy to commit murder and acquitted. She was, however, not released from custody because she was ordered by the Governor of Texas under a requisition of the Governor of Georgia, to be held for delivery to an agent of the State of Georgia for removal to that State as a fugitive from justice.

Alleging these facts, an application for release by *habeas corpus* was then presented to a state court upon the charge that the extradition proceedings and the warrant of removal thereunder were "wholly null and void" because "your petitioner was never a fugitive from justice from the State of Georgia to the State of Texas within the meaning and intent of the laws of the United States regulating extradition proceedings." On the return to the writ, the court, finding the facts to be as above stated, refused to discharge the petitioner and the case is

before us to review a judgment of the Court of Criminal Appeals which adopted the findings of the trial court and affirmed its action.

All the Federal questions involve the meaning of § 2 of Article IV of the Constitution which is as follows: "A person charged in any State with treason, felony, or other crime, who shall flee from justice and be found in another State, shall, on the demand of the executive authority of the State from which he fled, be delivered up to be removed to the State having jurisdiction of the crime;" they also depend on § 5278 of the Revised Statutes which is but a reproduction of § 1 of the act of February 12, 1793 (Chap. 7, § 1, 1 Stat. 302), giving effect to and establishing the methods of procedure to be resorted to for the purpose of enforcing the provisions of the Constitution on the subject to the extent that their execution was by the statute provided for.

Broadly there is but a single question for consideration, Was the order for rendition repugnant to the Constitution and the provisions of the statute? But two inquiries are involved in its solution: First, was the rendition order void because under the facts there was no power to award it except by disregarding express prohibitions or requirements of the Constitution or statute or by necessary implication adversely affecting rights thereby created; and second, even although this was not the case, was the order nevertheless void because under the circumstances it dealt with a situation which by the effect of the statute was taken out of the reach of state authority even although no express provision was made in the statute for dealing with such condition by any authority, state or Federal? We consider the two inquiries under separate headings.

First. For the purpose of the solution of the inquiry under this heading we treat the following proposition as beyond question: (a) That prior to the adoption of the

Constitution fugitives from justice were surrendered between the States conformably to what were deemed to be the controlling principles of comity. *Kentucky* v. *Dennison*, 24 How. 66, 101, 102; 2 Moore on Extradition and Interstate Rendition, p. 820 *et seq.* (b) That it was intended by the provision of the Constitution to fully embrace or rather to confer authority upon Congress to deal with such subject. *Prigg* v. *Pennsylvania*, 16 Pet. 539; *Kentucky* v. *Dennison, supra; Taylor* v. *Taintor*, 16 Wall. 366; *Appleyard* v. *Massachusetts*, 203 U. S. 222. (c) That the act of 1793 (now Rev. Stat., § 5278) was enacted for the purpose of controlling the subject in so far as it was deemed wise to do so, and that its provisions were intended to be dominant and so far as they operated controlling and exclusive of state power. *Prigg* v. *Pennsylvania, supra; Kentucky* v. *Dennison, supra*, pp. 104, 105; *Mahon* v. *Justice*, 127 U. S. 700; *Lascelles* v. *Georgia*, 148 U. S. 537.

Coming in the light of these principles to apply the statute, it is not open to question that its provisions expressly or by necessary implication prohibited the surrender of a person in one State for removal as a fugitive to another where it clearly appears that the person was not and could not have been a fugitive from the justice of the demanding State. *Ex parte Reggel*, 114 U. S. 642; *Roberts* v. *Reilly*, 116 U. S. 80; *Hyatt* v. *Corkran*, 188 U. S. 691; *Bassing* v. *Cady*, 208 U. S. 386, 392.

From this it results that the first inquiry here is, did it appear that the accused was a fugitive from the justice of the State of Georgia? While the facts which we have stated do not disclose affirmatively that she was ever in Georgia and the date, if at all, of her flight from that State, we think that she was such a fugitive is to be assumed for three obvious reasons: because there was no question of such fact made in the application for *habeas corpus* since it is apparent on the face of the application that the ground of relief relied upon was not that there had

been no flight from Georgia, but that there was and could have been no flight into Texas since the coming into that State was involuntary and resulted solely from the extradition proceedings; because that view of the subject was assumed, both in the elaborate opinion of the court below and that of the dissenting judge, to be unquestioned; and finally because neither in the assignments of error in this court nor in the arguments pressed upon our attention is the contrary view insisted upon or even suggested. From that aspect, therefore, there is no ground for saying that the extradition order conflicted with the express provision of the statute.

Was there a conflict between the statute and the order for removal to Georgia arising by necessary implication from the fact that the accused had been brought into the State of Texas on a requisition upon the State of Oregon and had not been released from custody or been returned to Oregon, is the only remaining question under this heading. While it is quite true, as pointed out in the opinion of the court below, and in that of the judge who dissented, that there are some decided cases and opinions expressed by text writers which sustain the affirmative view of this inquiry, the subject is here not an open one since it has been expressly foreclosed by the decision in *Lascelles* v. *Georgia*, 148 U. S. 537. In that case the issue for decision was whether a person accused who had been removed to the State of Georgia from another State on extradition proceedings for trial for a specified crime was liable in Georgia to be tried for another and different crime. Reviewing the whole subject and calling attention to the broad lines of distinction between international extradition of fugitives from justice and interstate rendition of such fugitives under the Constitution and the provisions of the act of Congress and the error of assuming that the doctrine of asylum applicable under international law to the one case was applicable to the other, it was

held that the right to prosecute for such other offense existed. The court said (p. 542): "Neither the Constitution, nor the act of Congress providing for the rendition of fugitives upon proper requisition being made, confers, either expressly or by implication, any right or privilege upon such fugitives under and by virtue of which they can assert, in the State to which they are returned, exemption from trial for any criminal act done therein. No purpose or intention is manifested to afford them any immunity or protection from trial and punishment for any offences committed in the State from which they flee. On the contrary, the provision of both the Constitution and the statutes extends to *all* crimes and offences punishable by the laws of the State where the act is done. *Kentucky* v. *Dennison*, 24 How. 66, 101, 102; *Ex parte Reggel*, 114 U. S. 642."

We are thus brought to the remaining heading, which is,

Second. Although the order for rendition was not in conflict either expressly or by necessary implication with any of the provisions of the Constitution or statute, was it nevertheless void under the circumstances because it dealt with a subject with which it was beyond the power of the State to deal and which was therefore brought as the result of the adoption of the statute within exclusive Federal control although no provision dealing with such subject is found in the statute? To appreciate this question, the proposition relied upon needs to be accurately stated. It is this: The Constitution provides for the rendition to a State of a person who shall have fled from justice and be found in another State, that is, for the surrender by the State in which the fugitive is found. This, it is conceded, would cover the case and sustain the authority exercised, as the accused was a fugitive from the justice of Georgia and was found in Texas. But the proposition insists that the statute is not as broad as the Constitution since it provides not for the surrender of the fugitive

by the State in which he is found but only for his surrender by the State into which he has fled, thus leaving unprovided for the case of a fugitive from justice who is found in a State but who has not fled into such State because brought into such State involuntarily by a requisition from another. And the argument is supported by the contention that as the statute exercises the power conferred by the Constitution and is exclusive, it occupies the whole field and prohibits all state action even upon a subject for which the statute has not provided and which therefore in no manner comes within its express terms. But we are of the opinion that the contention rests upon a mistaken premise and unwarrantedly extends the scope of the decided cases upon which it relies. The first, because it erroneously assumes that although the statute leaves a subject with which there was power to deal under the Constitution unprovided for, it therefore took all matters within such unprovided area out of any possible state action. And the second, because while it is undoubtedly true that in the decided cases relied upon (*Kentucky* v. *Dennison, supra; Roberts* v. *Reilly, supra; Hyatt* v. *Corkran, supra*) the exclusive character of the legislation embodied in the statute was recognized, those cases when rightly considered go no further than to establish the exclusion by the statute of all state action from the matters for which the statute expressly or by necessary implication provided.

No reason is suggested nor have we been able to discover any, to sustain the assumption that the framers of the statute in not making its provisions exactly coterminous with the power granted by the Constitution did so for the purpose of leaving the subject so far as unprovided for beyond the operation of any legal authority whatever, state or national. On the contrary, when the situation with which the statute dealt is contemplated, the reasonable assumption is that by the omission to

extend the statute to the full limits of constitutional power it must have been intended to leave the subjects unprovided for not beyond the pale of all law, but subject to the power which then controlled them—state authority until it was deemed essential by further legislation to govern them exclusively by national authority. In fact, such conclusion is essential to give effect to the act of Congress, since to hold to the contrary would render inefficacious the regulations provided concerning the subjects with which it dealt. This becomes manifest when it is considered that if the proposition now insisted upon were accepted, it would follow that the delivery of a criminal who was a fugitive from justice by one State on a requisition by another would exhaust the power and the criminal, therefore, whatever might be the extent and character of the crimes committed in other States, would remain in the State into which he had been removed without any authority to deliver him to other States from whose justice he had fled. And this, while paralyzing the authority of all the States, it must be moreover apparent, would cause them all to become involuntary asylums for criminals, for no method is suggested by which a criminal brought into a State by requisition if acquitted could be against his will deported, since to admit such power would be virtually to concede the right to surrender him to another State as a fugitive from justice for a crime committed within its borders.

It follows from what we have said that the court below was right in refusing to discharge the accused and its judgment therefore must be and it is

Affirmed.

By stipulation of counsel a similar judgment will be entered in case of *Victor E. Innes* v. *Tobin, Sheriff*, No. 533.